



# Department of Defense INSTRUCTION

NUMBER 2310.5

January 31, 2000

USD(P)

SUBJECT: Accounting for Missing Persons

- References:
- (a) [DoD Directive 5110.10](#), "Defense Prisoner of War/Missing in Action Office (DPMO)," July 16, 1993
  - (b) Sections 1501-1513 of title 10, United States Code
  - (c) [DoD 8910.1-M](#), "DoD Procedures for Management of Information Requirements," June 1998, authorized by [DoD Directive 8910.1](#), June 11, 1993
  - (d) [DoD Directive 2310.2](#), "Personnel Recovery," June 30, 1997
  - (e) through (l), see enclosure 1

## 1. PURPOSE

This Instruction:

1.1. Implements reference (a) as it pertains to boards of inquiry and case resolution files.

1.2. Implements Section 1501 of reference (b).

1.2.1. Establishes policy, assigns responsibilities, and prescribes procedures followed by Military Department boards of inquiry and the officials reviewing the reports of such boards.

1.2.2. Determines the status of covered persons and provides for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

1.3. Implements Section 1502 of reference (b).

1.3.1. Establishes policy, assigns responsibilities, and prescribes procedures governing the preliminary assessment and recommendation by a commander of a person's status.

1.3.2. Provides for the transmission of an advisory copy of the commander's preliminary assessment and recommendation to the theater Component Commander.

1.3.3. Sets forth the procedures for safeguarding and forwarding records regarding covered persons. These procedures are found at enclosure 3.

1.4. Implements Section 1503 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures to be followed by Military Department initial boards of inquiry. These procedures are found at enclosure 4.

1.5. Implements Section 1504 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures to be followed by Military Department subsequent boards of inquiry. These procedures are found at enclosure 5.

1.6. Implements Section 1505 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures to be followed by Military Department further review boards. These procedures are found at enclosure 6.

1.7. Implements Section 1506 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures for:

1.7.1. Creating and maintaining case resolution files on covered persons; and

1.7.2. For the protection and treatment of the contents thereof. These procedures are found at enclosure 7.

1.8. Implements Section 1507 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures for Military Department boards when recommending that a person be declared dead. Depending upon the nature of the board being convened, these procedures are found at enclosures 4, 5, 6, or 8.

1.9. Implements Section 1509 of reference (b) by implementing policy, assigning responsibilities, and prescribing procedures for:

1.9.1. The review of new information that may change the status of;

1.9.2. Or significantly contribute to resolving the fate of;

1.9.3. A person who is unaccounted for from the Korean conflict, the Cold War, or the Indochina War era. These procedures are found at enclosure 8.

1.10. Implements policy, assigns responsibility, and prescribes procedures for the Armed Forces Identification Review Board. These procedures are found at enclosure 9.

## 2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the Department of Defense (DoD) Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2.2. Procedures prescribed herein shall apply uniformly throughout the Department of Defense for the determination of the status of covered persons (defined in paragraph E2.1.7.) and for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

2.3. This Instruction applies in the case of any member of the Armed Forces on active duty or Reserve component performing official duties, a United States citizen civilian officer or employee of the Department of Defense, and any other person determined by the USD(P) to be a covered person who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

2.4. When a covered person becomes accounted for or is otherwise determined to be in a status other than missing (i.e., deserted, absent without leave, or dead), provisions herein relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply.

### 3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

### 4. POLICY

The Department of Defense considers the accounting for missing personnel to be one of its highest priorities. It is DoD policy to implement timely and effective procedures to enhance personnel recovery operations, to determine accurately the status of those who are unaccounted for, and to provide current information to the primary next of kin, members of the immediate family, and to the previously designated person of those who are missing.

### 5. RESPONSIBILITIES

5.1. The Secretary of Defense has delegated authority to the Under Secretary of Defense for Policy who shall:

5.1.1. Ensure compliance with this Instruction.

5.1.2. Coordinate with the Department of Transportation for:

5.1.2.1. Implementation of procedures for the determination of the status of persons who are members of the Coast Guard (when it is operating as a Military Service of the Department of the Navy); and

5.1.2.2. Collection, analysis, review, and update of information on such persons.

5.1.3. Determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered covered by the Missing Persons Act (reference (b)) and, in appropriate circumstances, any non-U.S. citizen civilian officers and employees of the Department of Defense to whom coverage should be extended.

5.2. The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) shall:

5.2.1. Coordinate with appropriate DoD Agencies to ensure intelligence information, relating to missing persons, originating from all members of the U.S.

Intelligence Community is forwarded expeditiously to the appropriate Military Department, the Combatant Commanders, and to the Defense Prisoner of War/Missing Personnel Office (DPMO), and

5.2.2. Collaborate with other appropriate Agencies to ensure maximum support in this regard.

5.3. The Assistant Secretary of Defense for Public Affairs (ASD(PA)) shall:

5.3.1. Assume ultimate responsibility for answering media and public inquiries about covered persons.

5.3.2. Provide overall public affairs policy and guidance for issues concerning covered persons.

5.4. The Deputy Assistant Secretary of Defense for Prisoners of War/Missing Personnel Affairs shall:

5.4.1. Pursuant to DoD Directive 5110.10 (reference (a)), have centralized management of prisoner of war/missing in action (POW/MIA) affairs.

5.4.2. Advise the Secretary of Defense and the Under Secretary of Defense for Policy on all aspects of policy regarding missing persons covered by reference (b).

5.4.3. Serve as the Executive Agent for the Office of the Secretary of Defense for formulating policy and ensuring policy compliance with this Instruction.

5.4.4. On behalf of the Department of Defense, coordinate with other Departments and Agencies of the United States on all matters concerning covered persons.

5.4.5. Within the Department of Defense, coordinate with the DoD Components on all matters that concern missing persons covered by reference (b).

5.4.6. Forward all correspondence through the appropriate Service mortuary/casualty affairs office when required herein to send notification to the primary next of kin, other members of the immediate family, and any other previously designated person.

5.5. The Secretaries of the Military Departments shall:

5.5.1. Administer Service programs regarding missing persons covered by reference (b) consistent with the procedures in section 6., below.

5.5.2. Permit the individual, who is primary next of kin or the previously designated person of any covered person, to designate in writing another individual to act on his or her behalf as primary next of kin or the previously designated person. The individual so designated shall be treated as if he or she was the primary next of kin or the previously designated person. The person who made the designation may revoke such a designation, in writing, at any time.

5.5.3. Address any recommendations for procedural changes in this Instruction to the Under Secretary of Defense for Policy, ATTN: DPMO.

5.6. The Commanders of the Combatant Commands shall comply with the instructions contained herein.

5.7. All DoD Components shall, in response to written requests made by the president of a board, which is convened pursuant to the Missing Persons Act (reference (b)), release information to the board president in accordance with the procedures contained at section E5.6.

## 6. PROCEDURES

Procedures and standards for implementation are in enclosures 3 through 9.

## 7. INFORMATION REQUIREMENTS

All reports prepared by the various Boards referred to throughout this Instruction are exempt from licensing in accordance with paragraph C4.4.3. of DoD 8910.1-M (reference (c)).

## 8. EFFECTIVE DATE

This Instruction is effective immediately upon signature. The Secretaries of the Military Departments shall forward one copy of implementing documents to the Under Secretary of Defense for Policy, ATTN: DPMO.

A handwritten signature in black ink, appearing to read "W. B. Slocombe", with a long horizontal flourish extending to the right.

**Walter B. Slocombe**  
**Under Secretary of Defense For Policy**

### Enclosures - 9

- E1. References, continued
- E2. Definitions
- E3. Commander's Preliminary Assessment and Recommendation
- E4. Initial Boards of Inquiry
- E5. Subsequent Boards of Inquiry
- E6. Further Review Boards
- E7. Case Resolution Files
- E8. Preenactment Cases
- E9. Armed Forces Identification Review Board

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD 5200.1-R, "Information Security Program," January 1997, authorized by [DoD Directive 5200.1](#), December 13, 1996
- (f) DoD 5400.11-R, "Department of Defense Privacy Program," August 1983, authorized by [DoD Directive 5400.11](#), June 9, 1982
- (g) Section 435 of title 50, United States Code, Note
- (h) [DoD Directive 5154.24](#), "Armed Forces Institute of Pathology (AFIP)," October 28, 1996
- (i) Sections 4711 and 9711 of title 10, United States Code
- (j) CJCS Memorandum of Policy #16, "Joint Mortuary Affairs Policy," May 31, 1990
- (k) DoD Instruction 1300.18, "Military Personnel Casualty Matters, Policies, and Procedures," December 27, 1991
- (l) [DoD 7750.7-M](#), "DoD Forms Management Program Procedures Manual," August 1991, authorized by [DoD Instruction 7750.7](#), May 31, 1990



## E2. ENCLOSURE 2

### DEFINITIONS

E2.1.1. ACCOUNTED FOR. With respect to a person in a missing status:

E2.1.1.1. The person is returned to United States control alive;

E2.1.1.2. The remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

E2.1.1.3. Credible evidence exists to support another determination of the person's status (such as when a person's remains have been destroyed and are, thus, unrecoverable).

E2.1.2. BELEAGUERED. A member of an organized element that has been surrounded by a hostile force to prevent escape of its members.

E2.1.3. BESIEGED. A member of an organized element that has been surrounded by a hostile force for the purpose of compelling it to surrender.

E2.1.4. CAPTURED. A person who has been seized as the result of action of an unfriendly military or paramilitary force in a foreign country.

E2.1.5. CASE RESOLUTION FILE. A file, or files, established by an entity, or entities, within the Department of Defense, for each unaccounted for person for whom the Secretary concerned possesses information relevant to that person's status. A case resolution file may include the contents of a person's personnel file.

E2.1.6. CLASSIFIED INFORMATION. Information, when unauthorized disclosure occurs (as determined under applicable law and regulations), that could reasonably be expected to damage the national security.

E2.1.7. COVERED PERSONS. Refers to those persons for whom a determination of status must be made under the provisions of this Instruction. It also refers to those persons for whom the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information is related. These persons include:

E2.1.7.1. Any member of the Armed Forces on active duty or Reserve component performing official duties:

E2.1.7.1.1. Who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of hostile action; and

E2.1.7.1.2. Whose status is undetermined or who is unaccounted for.

E2.1.7.2. Any other person who is a citizen of the United States and is a civilian officer or employee of the Department of Defense or (subject to the provisions in paragraph E2.1.7.3., below) is an employee of a contractor of the Department of Defense:

E2.1.7.2.1. Who serves in direct support of, or accompanies, the Armed Forces in the field under orders and becomes involuntarily absent as a result of a hostile action; or

E2.1.7.2.2. Under circumstances suggesting that the involuntary absence is a result of a hostile action; and

E2.1.7.2.3. Whose status is undetermined or who is unaccounted for.

E2.1.7.3. The USD(P) shall determine, with regard to a pending or ongoing military operation, the specific employees or groups of employees of DoD contractors to be considered to be covered persons. In appropriate circumstances, the USD(P) may expand coverage to non-U.S. citizen civilian officers and employees of the Department of Defense.

E2.1.8. DETAINED. A person who is prevented from proceeding or is restrained in custody for alleged violation of international law or other reason claimed by the Government or group under which the person is being held.

E2.1.9. FURTHER REVIEW BOARD. A Board, appointed by the Secretary concerned, that:

E2.1.9.1. Inquires into the whereabouts and status of a person in a missing status; and

E2.1.9.2. Convenes at the conclusion of a subsequent board of inquiry upon receipt of information that may result in a change of status of a person or at any other time as determined by the Secretary concerned.

E2.1.10. HOSTILE ACTION. Acts of an opposing force, or friendly action in response thereto, resulting in the involuntary absence of covered persons while engaged in an operational environment, or while going to or returning therefrom. For example, a friendly aircraft lost enroute to a target as a result of a mechanical malfunction, not the result of enemy fire, would be deemed to have been lost as a result of hostile action.

E2.1.11. INITIAL BOARD OF INQUIRY. The Secretary concerned appoints an initial board of inquiry not later than 10 calendar days after receipt from a commander of a recommendation that a person be placed in a missing status. An initial board of inquiry conducts an inquiry into the whereabouts and status of a person and makes a recommendation to the Secretary concerned regarding the person's status.

E2.1.12. INTERNEED. A person definitely known to have been taken into custody of a nonbelligerent foreign power as the result of and for reasons arising out of any armed conflict in which the Armed Forces of the United States are engaged.

E2.1.13. MEMBER OF THE IMMEDIATE FAMILY. In the case of a missing person, means the following:

E2.1.13.1. The spouse of the person.

E2.1.13.2. A natural child, adopted child, stepchild, or illegitimate child of the person.

E2.1.13.2.1. An illegitimate child must be acknowledged by the person or parenthood been established by a court of competent jurisdiction.

E2.1.13.2.2. The term means a surviving parent or legal guardian of such child if such child has not attained the age of 18 years.

E2.1.13.3. A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

E2.1.13.4. A biological or adoptive brother or sister of the person, if such brother or sister has attained the age of 18 years.

E2.1.13.5. Any other blood relative or adoptive relative, including adoptive parents, of the person, if:

E2.1.13.5.1. Such relative was given sole legal custody of the person by a court decree or

E2.1.13.5.2. Otherwise under law (e.g., through adoption) before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

E2.1.14. MILITARY DEPARTMENTS. The Department of the Army, the Department of the Navy (including the Coast Guard when it is operating as a Military Service of the Department of the Navy), and the Department of the Air Force.

E2.1.15. MISSING. A person who is not present at his or her duty location due to apparent involuntary reasons and whose location is unknown.

E2.1.16. MISSING IN ACTION. The involuntary absence of a person whose location is unknown; and

E2.1.16.1. The absence is a result of a hostile action; or

E2.1.16.2. The absence is under circumstances suggesting it is a result of a hostile action.

E2.1.17. MISSING PERSON. Includes one of the following:

E2.1.17.1. A member of the Armed Forces on active duty or Reserve component performing official duties that is in a missing status.

E2.1.17.2. A civilian employee of the Department of Defense or DoD contractor that serves in direct support of, or accompanies, the Armed Forces in the field under orders and who is in a missing status.

E2.1.17.3. Any unaccounted for person who:

E2.1.17.3.1. Has been classified as a prisoner of war or missing in action during the Korean conflict (June 27, 1950 through January 31, 1955); and

E2.1.17.3.2. Known to be or suspected to be alive at the end of that conflict or was classified as missing in action and whose capture was possible; or

E2.1.17.3.3. Has engaged in intelligence operations (such as aerial "ferret" reconnaissance missions over and around the Soviet Union and China) during the Cold War (September 2, 1945 through August 21, 1991); or

E2.1.17.3.4. Has been classified as a prisoner of war or as missing in action during the Indochina War era (July 8, 1959 through May 15, 1975); and

E2.1.17.3.5. New and credible information is found, received, or identified after November 18, 1997 that may be relevant to changing that person's status from either "deserted" or "dead."

E2.1.18. MISSING PERSONS ACT. The statute embodying the system of accounting for missing persons (see 10 U.S.C. 1501 through 1513 (reference (b))).

E2.1.19. MISSING PERSON'S COUNSEL. The Counsel appointed by the Secretary concerned to represent the interests of the person covered by the inquiry (excluding any member of the person's family or other interested parties).

E2.1.20. MISSING STATUS. The status of a missing person who is determined to be absent in any of the following categories:

E2.1.20.1. Missing.

E2.1.20.2. Missing in action.

E2.1.20.3. Interned in a foreign country.

E2.1.20.4. Captured.

E2.1.20.5. Beleaguered.

E2.1.20.6. Besieged.

E2.1.20.7. Detained in a foreign country against that person's will.

E2.1.21. PREENACTMENT CASE BOARD. A Board appointed by the Secretary concerned that inquires into the whereabouts and status or fate of certain unaccounted for persons from the Korean conflict, the Cold War, and the Indochina

War era when new information is received that may be related to one or more of those persons.

E2.1.22. PREVIOUSLY DESIGNATED PERSON. The person or persons (other than the missing person's primary next of kin or immediate family) that is specified in writing by the missing person to receive information on the whereabouts and status of the missing person.

E2.1.23. PRIMARY NEXT OF KIN. In the case of a missing person, a person that has been designated (in the following priority) as the surviving spouse, blood relative, adoptive relative or, if none of the above, a person standing in loco parentis.

E2.1.24. PRIVILEGED INFORMATION. A debriefing report, or any part thereof, provided by a missing person returned to United States control that is obtained under a promise of confidentiality.

E2.1.25. SECRETARY CONCERNED. Refers to a Secretary of the Military Services.

E2.1.25.1. A Secretary concerned may delegate the responsibilities assigned herein to a level no lower than the office having primary responsibility for developing personnel programs, implementing personnel policies, and conducting personnel operations. This responsibility should not be delegated to a level lower than that of an office occupied by a person in a rank or grade below brigadier general or member of the Senior Executive Service. However, these responsibilities may be delegated to a lower level due to military exigencies or for other purposes that the Secretary concerned deems appropriate.

E2.1.25.2. The term "Secretary concerned" includes, in the case of a civilian officer or employee of the Department of Defense or of a DoD contractor, the Secretary of the Military Department employing the person. In circumstances where the person is employed by an element of the Department of Defense (e.g., Defense Finance and Accounting Service) other than a Military Department, Secretary concerned means the most appropriate Secretary of the Military Department able to apply the procedures described herein.

E2.1.26. SUBSEQUENT BOARD OF INQUIRY. A Board, appointed by the Secretary concerned to make a recommendation regarding a missing person's status, that inquires into the whereabouts and status of a missing person and is convened after the conclusion of an initial board of inquiry upon the earlier of:

E2.1.26.1. Receipt of information that may change a person's status that becomes available within one year from the date the commander transmitted the preliminary assessment recommending a person be placed in a missing status; or

E2.1.26.2. On or about one year after the date the commander transmitted the preliminary assessment recommending that a person be placed in a missing status.

E2.1.27. THEATER COMPONENT COMMANDER. A Commander of all forces of an armed force assigned to a Combatant Command and is directly subordinate to the Commander of the Combatant Command.

### E3. ENCLOSURE 3

#### COMMANDER'S PRELIMINARY ASSESSMENT AND RECOMMENDATION

##### E3.1. PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER

E3.1.1. A flow chart diagramming the elements of the commander's preliminary assessment and recommendation, together with the elements of an initial board of inquiry that would follow that assessment, is found at attachment E3.A1. of this enclosure.

E3.1.2. Information may be received showing that the whereabouts and status of a covered person are uncertain and that the absence of the person may be involuntary. If so, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. When the circumstances of the involuntary absence are questionable, i.e., whether the absence resulted from hostile action, the commander of the unit, facility, or area to or in which the person is assigned shall submit a preliminary assessment and recommendation. Attachment E3.A2. of this enclosure contains a checklist of those items, as applicable, that the commander may wish to consider when preparing the assessment. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall:

E3.1.2.1. Recommend that the person be placed in a missing status; and

E3.1.2.2. Transmit a report containing the recommendation to the Secretary concerned in accordance with procedures prescribed by that Secretary not later than 10 days after receiving such information.

E3.1.3. DD Form 2812, "Commander's Preliminary Assessment and Recommendation Regarding Missing Person," is found at attachment E3.A3. of this enclosure.

E3.1.4. Transmission of a DD Form 2812 is not always required. For instance, evidence regarding a covered person may be received through news coverage or discovered through diplomatic channels. That evidence may be sufficient to enable the commander to make a preliminary assessment regarding the covered person's whereabouts and status and whether the absence of the person is involuntary. In all cases, however, the evidence upon which this determination is made shall be recorded



and preserved. Receipt of additional evidence could require the commander to submit a preliminary assessment and recommendation. Such evidence could include cessation of hostilities without the return of the covered person or a complete lack of further evidence that, without additional information, could create a doubt concerning the whereabouts and status of the covered person. A preliminary assessment and recommendation is required whenever evidence is received or discovered that may cause the whereabouts and status of the covered person to be uncertain and indicates that the absence of the person may be involuntary.

E3.1.5. Persons who are "covered persons" (defined herein at paragraph E2.1.7.) are limited to those whose involuntary absence arises as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action and whose status is undetermined or who is unaccounted for. A case resolution file will be created and maintained on a covered person and an initial board of inquiry will be convened to inquire into the whereabouts and status of the person. The Under Secretary of Defense for Policy shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered persons. In appropriate circumstances, the USD(P) may expand coverage to non-U.S. citizen civilian officers and employees of the Department of Defense.

E3.1.6. The scope of persons for whom the United States will undertake Personnel Recovery is not limited to situations involving hostile action or circumstances suggestive of hostile action. Personnel Recovery measures may be initiated for personnel (U.S., allied, or coalition) who become unaccounted for as a result of training exercises, operations other than war wherein hostile action is not involved and operational environments not involving hostile action. The specific persons for whom Personnel Recovery may be initiated will vary based upon the circumstances unique to each situation. Located at attachment E3.A4. of this enclosure is a graph depicting the relationship of "covered persons" for whom case resolution files and boards of inquiry apply and those to whom Personnel Recovery applies. For further information on Personnel Recovery, refer to DoD Directive 2310.2, "Personnel Recovery" (reference (d)).

## E3.2. TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER

The Commander of the unit, facility, or area to or in which the person is assigned shall, when recommending that a person be placed in a missing status, transmit an

advisory copy of the preliminary assessment and recommendation to the theater Component Commander having jurisdiction over the missing person.

### E3.3. SAFEGUARDING AND FORWARDING OF RECORDS

In accordance with procedures prescribed by the Secretary concerned, a Commander making a preliminary assessment and recommendation with respect to a missing person shall:

E3.3.1. Safeguard and forward, to the Secretary concerned for official use, any information relating to the whereabouts and status of the missing person that results from the preliminary assessment and recommendation or from actions taken to locate the person.

E3.3.2. Attachment E3.A2. of this enclosure contains a checklist of those items, as applicable, that the commander may wish to safeguard and forward.

### E3.4. EXTENSION OF TIME LIMIT

The Secretary concerned can extend any time limit specified herein on a case-by-case basis and only upon a showing of good cause. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. For example, if an action must be taken within ten calendar days but circumstances prevent doing so an extension may be requested; however, the length of the extension could not exceed ten calendar days. The Secretary concerned can provide subsequent extensions on the same basis.

#### Attachments - 4

E3.A1. Flow Chart: Commander's Report and Initial Board of Inquiry

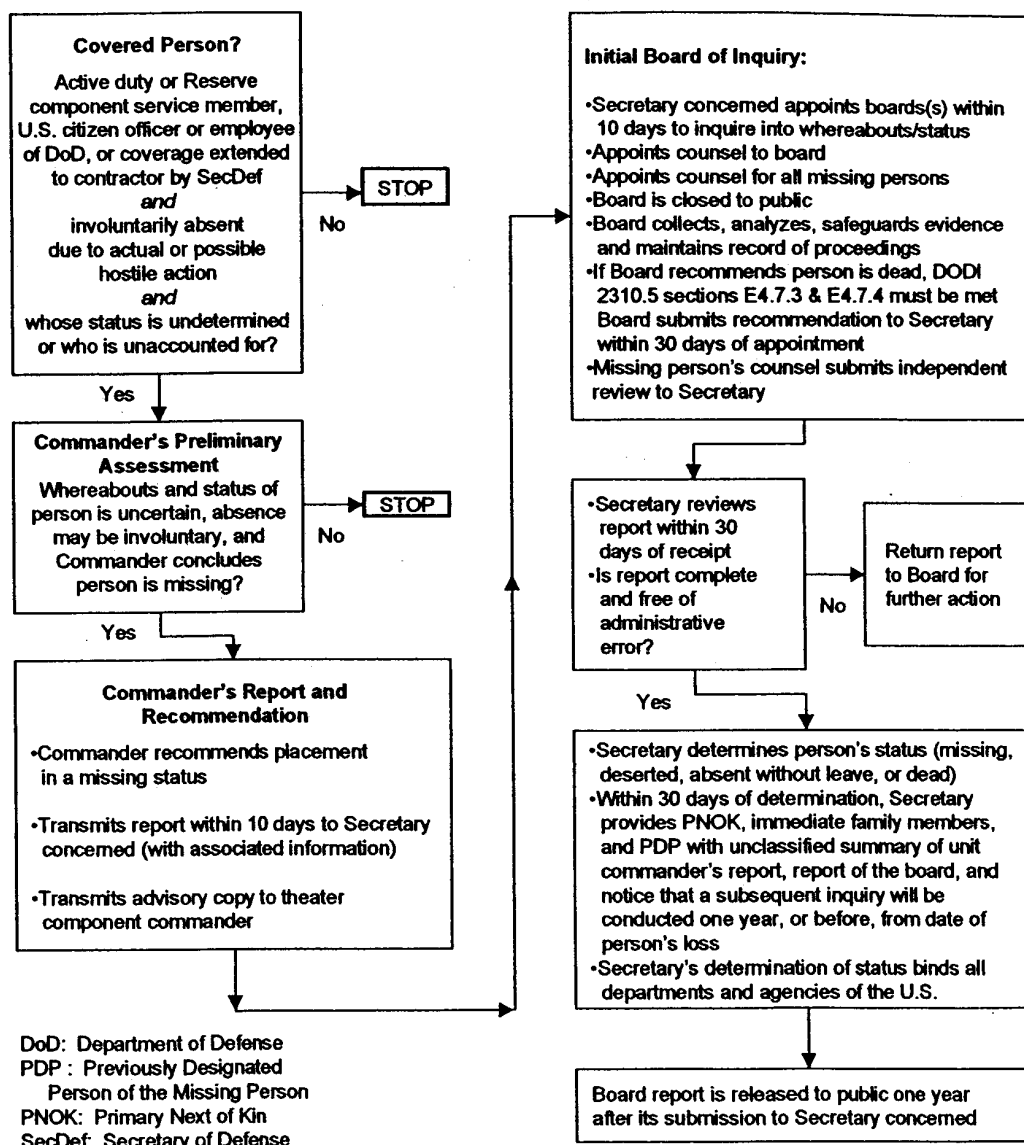
E3.A2. Commander's Checklist

E3.A3. DD Form 2812: Commanders's Preliminary Assessment and Recommendation Regarding Missing Person--SAMPLE

E3.A4. Relationship of Covered Persons (for Case Resolution Files and Boards) to Personnel Recovery

## E3.A1. ATTACHMENT 1 TO ENCLOSURE 3

## COMMANDER'S REPORT AND INITIAL BOARD OF INQUIRY



## E3.A2. ATTACHMENT 2 TO ENCLOSURE 3

### COMMANDER'S CHECKLIST

#### EQUIPMENT:

- ☐ Craft engine serial numbers
- ☐ Craft maintenance records
- ☐ Weapons serial numbers
- ☐ Life support equipment information
- Vehicle information:
  - ☐ Type of aircraft, airboat, armored personnel carrier, etc.
  - ☐ Serial numbers
  - ☐ Engine type and serial number
  - ☐ Manufacturer
- ☐ Combat Survivor Evader/Locator system serial number
- ☐ Other equipment serial numbers as available

#### OPERATIONAL:

##### Air Incidents:

- ☐ Intended target (Universal Transverse Mercator and geographical coordinates)
- ☐ Mission Data (Aircraft headings, turn points, altitudes, primary and alternate targets, etc.)
- ☐ Call signs (aircraft/pilot)
- ☐ Isolated personnel (ISOPREP) cards (Air Force only)
- ☐ Crash analysis report
- ☐ Evasion plan of action
- ☐ Pilot Identification Code(s)

##### Ground incidents:

- ☐ Objective target (Universal Transverse Mercator and geographical coordinates)
- ☐ Description of surrounding area
- ☐ Mission data (planned routes, rallying points, times, etc.)

##### All incidents:

- ☐ Witness statements
- ☐ Order of battle data (friendly and enemy)

#### PERSONNEL INFORMATION:

- ☐ Finger print cards
- ☐ Jewelry worn at time of incident

- \_\_\_ Medical records
- \_\_\_ Dental records (with x-ray)
- \_\_\_ Service photograph; photo in flight suit with insignia; close up showing all aspects including ear lobes
- \_\_\_ Dog tag data
- \_\_\_ DNA information
- \_\_\_ Next of kin medical information (DNA reporting), if available
- \_\_\_ Defense Department Form 1300
- \_\_\_ Service casualty board report
- \_\_\_ Standard Form 86
- \_\_\_ Blood type
- \_\_\_ Eye glass prescriptions
- \_\_\_ Writing sample
- \_\_\_ Identification card information (including serial number and certifying official)
- \_\_\_ Geneva Convention card information (if used)
- \_\_\_ Training records (evasion and escape; survival, evasion, resistance and escape)

INTELLIGENCE INFORMATION:

- \_\_\_ Cockpit tapes (including personal tapes) of returning aircraft
- \_\_\_ Witness statements
- \_\_\_ Search and rescue logs/reports
- \_\_\_ Press reports (foreign and domestic)
- \_\_\_ Foreign broadcast information service transmissions
- Intelligence reports:
  - \_\_\_ Signals intelligence
  - \_\_\_ Imagery intelligence
  - \_\_\_ Human intelligence
  - \_\_\_ Measurement and signature intelligence
- \_\_\_ Refugee reports
- \_\_\_ Deserter interrogations
- \_\_\_ Enemy prisoner of war interrogations
- \_\_\_ Agent reports
- \_\_\_ Special operations reports
- \_\_\_ Targeting information
- \_\_\_ Intelligence collection requirements/reports
- \_\_\_ Diplomatic source reports
- \_\_\_ Third country reports
- \_\_\_ International Committee of the Red Cross reports
- \_\_\_ Debriefings of Returnees or Escapees (United States and allied)
- \_\_\_ Joint Surveillance Targeting Acquisition Radar System tapes
- \_\_\_ Airborne Warning And Control System tapes
- \_\_\_ Combat Survivor/Evader Locator system transmission records
- Photography:
  - \_\_\_ Overhead (including Defense Support Program satellite tapes)

- ☐ Motion picture
- ☐ Television footage
- ☐ Gun camera
- ☐ Still photos (including any wingman photographs)
- ☐ Biographic/site reports
- ☐ Enemy archival reports (military and civilian)
- ☐ Grave site reports
- ☐ Crash site reports
- ☐ Casualty summary report
- ☐ Unit operational reports (battalion and higher)
- ☐ Name, rank and service numbers of those having knowledge of the incident
- ☐ Reports of attempted rescue (not search and rescue)
- ☐ Applicable portions of the unit history
- ☐ Weather reports
- ☐ Prison camp reports
- Maps:
  - ☐ Loss area
  - ☐ Target area
  - ☐ Engagement site
- Recovery efforts:
  - ☐ During hostilities
  - ☐ Post war
  - ☐ Excavation
- ☐ Case summary/comprehensive review
- ☐ Archival research reports
- ☐ Weather at time of loss
- ☐ Evasion symbol (with alternate)
- ☐ Blood chit number
- ☐ Joint Search And Rescue Center records
- ☐ Initial loss report
- ☐ Loss investigation report

## E3.A3. ATTACHMENT 3 TO ENCLOSURE 3

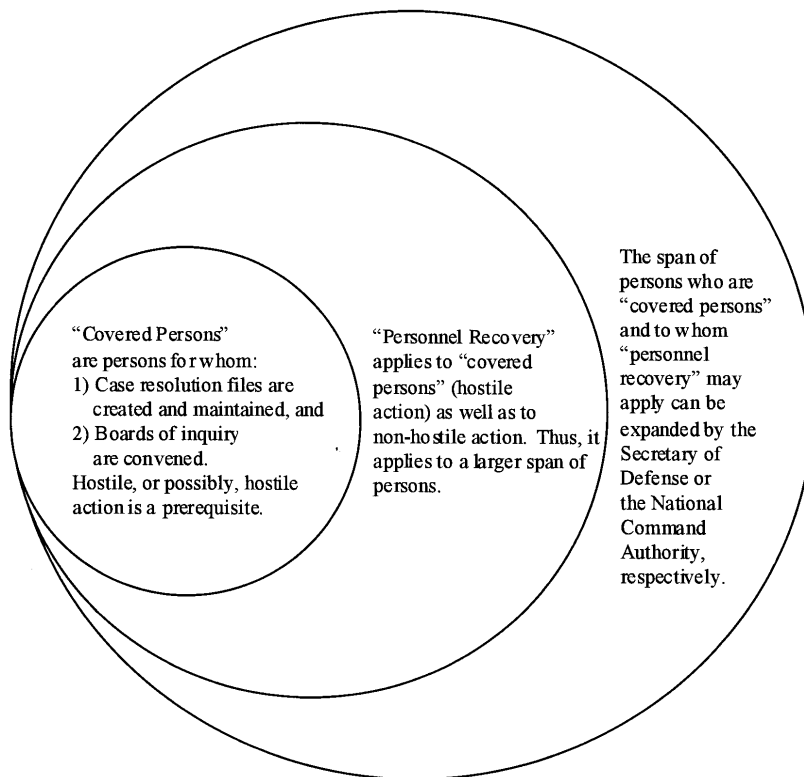
COMMANDER'S PRELIMINARY ASSESSMENT AND RECOMMENDATION  
REGARDING MISSING PERSON--SAMPLE

<b>COMMANDER'S PRELIMINARY ASSESSMENT AND RECOMMENDATION            REGARDING MISSING PERSON</b> <i>(For use of this form, see DODI 2310.5; the proponent agency is OSD/DPMO)</i>		
<b>SECTION I – IDENTITY OF MISSING PERSON</b> <i>(Use a separate report for each missing person.)</i>		
1. NAME (Last, First, Middle) <b>ROE, JOHN A.</b>	2. SOCIAL SECURITY NUMBER <b>123-45-6789</b>	3. RANK/GRADE/CIVILIAN <b>Capt/0-3</b>
4. DATE INFORMATION RECEIVED REGARDING MISSING PERSON'S LOSS (YYYYMMDD) <b>20010613</b>	5. THEATER IN WHICH SERVING AT TIME OF LOSS <b>SOUTHWEST ASIA</b>	
6. BRANCH OF ARMED SERVICE TO WHICH ASSIGNED, DETAILED, OR ATTACHED <b>U.S. AIR FORCE</b>	7. UNIT, FACILITY, OR AREA TO OR IN WHICH THE PERSON IS ASSIGNED <b>27<sup>th</sup> Fighter Squadron, 85<sup>th</sup> Composite Wing, Friendly AB, Host Country</b>	
<b>SECTION II – ASSESSMENT OF CIRCUMSTANCES</b>		
8. ASSESS THE CIRCUMSTANCES OF THE LOSS AND DESCRIBE WHY YOU BELIEVE THE PERSON IS MISSING <i>(Provide additional rationale and any other information pertinent to this assessment as attachments.)</i>  <i>(See attachments <u>1</u> through <u>7</u>.)</i> Capt Roe was Arrow 3 in a flight of four F-15C aircraft. At 1500 hours, Arrow 1 observed a midair puff of smoke from the general area where Arrow 3 and Arrow 4 had been. Over the radio, Arrow 1 heard Arrow 3 call out, "I'm hit." Shortly thereafter, Arrow 4, Arrow 3's wingman, observed Arrow 3 trailing smoke while Arrow 3 was upright. Arrow 4 observed Arrow 3 enter a cloud deck. Three minutes later, Arrow 1 and Arrow 2 are below the cloud deck when Arrow 1 sees a fire burning on the ground and Arrow 2 catches a glimpse of what may have been a parachute still in the air. Meanwhile, Arrow 4 hears a broken radio transmission to the effect of "I'm clear, I'm clear!" which may have been Arrow 3's survival radio. Because several seconds passed from the time Arrow 1 observed the puff of smoke and heard Arrow 3's radio transmission, Arrow 3's remaining upright when it disappeared in the cloud bank, and the other facts, I conclude Capt Roe is missing.		
<b>SECTION III - RECOMMENDATION</b>		
That the person be placed in a missing status.  Within 10 days of receiving information regarding the missing person, this report must be transmitted to the Secretary concerned of the missing person. In addition, safeguard and forward to the Secretary concerned for official use any information relating to the whereabouts and status of the missing person that results from this preliminary assessment or from actions taken to locate the person.  In addition, a copy of this report must be transmitted to the theater component commander having jurisdiction over the missing person.		
<b>9. COMMANDER OF UNIT, FACILITY, OR AREA TO OR IN WHICH THE MISSING PERSON IS ASSIGNED</b>		
a. TYPED NAME (Last, First, Middle Initial) <b>DOE, RICHARD I.</b>	b. GRADE <b>LtCol/0-5</b>	c. UNIT <b>27<sup>th</sup> Fighter Squadron, 85<sup>th</sup> Composite Wing</b>
d. SIGNATURE <b>/SIGNED/</b>		e. DATE SIGNED (YYYYMMDD) <b>20010614</b>

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E3.A4. ATTACHMENT 4 TO ENCLOSURE 3

RELATIONSHIP OF COVERED PERSONS ( FOR CASE RESOLUTION FILES  
AND BOARDS) TO PERSONNEL RECOVERY



**COVERED PERSONS VS. PERSONNEL RECOVERY**



## E4. ENCLOSURE 4

### INITIAL BOARDS OF INQUIRY

#### E4.1. SECRETARIAL REVIEW AND APPOINTMENT OF BOARD

E4.1.1. A flow chart diagramming the elements of the initial board of inquiry, together with the elements of the commander's preliminary assessment and recommendation of which it follows, is found at attachment E3.A1. to enclosure 3.

E4.1.2. Upon receiving a commander's preliminary assessment recommending that a person be placed in a missing status, the Secretary concerned shall review the recommendation and, not later than 10 calendar days after receiving it, appoint a board to conduct an inquiry into the whereabouts and status of the person. Attachment E4.A1. of this enclosure is a sample form of memorandum appointing an initial board of inquiry.

E4.1.3. Appointment of an initial board of inquiry is not always required. For instance, evidence regarding a covered person may be received through news coverage or discovered through diplomatic channels. That evidence may be sufficient to enable the Secretary concerned to make a determination regarding the covered person's whereabouts and status and whether the absence of the person is involuntary. In all cases, however, the evidence upon which this determination is made shall be recorded and preserved. Receipt of additional evidence could require the Secretary to appoint an initial board. Such evidence could include cessation of hostilities without the return of the covered person or a complete lack of further evidence that, without additional information, could create a doubt concerning the whereabouts and status of the covered person. Appointment of an initial board of inquiry is required whenever evidence is received or discovered that may cause the whereabouts and status of the covered person to be uncertain and indicates that the absence of the person may be involuntary.

E4.1.4. If it appears to the Secretary concerned that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board to inquire into the whereabouts and status of all such persons.

#### E4.2. COMPOSITION OF THE BOARD

E4.2.1. An initial board of inquiry shall consist of at least one individual who has

experience with, and understanding of, military operations or activities similar to the operation or activity in which the person disappeared. This individual shall be:

E4.2.1.1. A military officer, in the case of an inquiry regarding a member of the Armed Forces.

E4.2.1.2. A civilian, in the case of an inquiry regarding a civilian employee of the Department of Defense or of a DoD contractor.

E4.2.1.3. At least one military officer and a civilian, in the case of an inquiry regarding one or more members of the Armed Forces and one or more civilian DoD employees or DoD contractors. The ratio of such officers to such civilians on the Board shall be roughly proportional to the ratio of the number of members of the Armed Forces and the number of civilians who are the subjects of the Board's inquiry.

E4.2.2. An individual may be appointed as a member of an initial board of inquiry only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

E4.2.3. The Secretary concerned shall assign a judge advocate to the Board, or appoint an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons. Counsel so assigned or appointed may be referred to as the "legal advisor" and shall represent the interests of the United States. Duties of the legal advisor shall include advising the Board on questions of law or procedure pertaining to the Board, instructing the Board on governing statutes and directives, and monitoring (i.e., observing) the deliberations of the Board.

#### E4.3. DUTIES OF THE INITIAL BOARD OF INQUIRY

E4.3.1. Collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person.

E4.3.2. Collect appropriate documentation of the facts and evidence covered by the Board's investigation.

E4.3.3. Analyze the facts and evidence, make findings that must be supported by a preponderance of the evidence based on that analysis, and draw conclusions as to the current whereabouts and status of the person.

E4.3.4. With respect to each person the inquiry covers, recommend to the Secretary concerned who appointed the board that:

E4.3.4.1. The person be placed in a missing status; or

E4.3.4.2. The person be declared deserted, absent without leave, or (subject to the requirements prescribed in paragraphs E4.7.3. and E4.7.4.) dead.

In appropriate cases, the Board may recommend the person is accounted for (such as when credible evidence exists to support a determination that a person's remains have been destroyed and are unrecoverable).

#### E4.4. BOARD PROCEEDINGS

During the proceedings of a board of inquiry, the Board shall:

E4.4.1. Collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (classified or unclassified) relating to the whereabouts and status of each person the inquiry covers;

E4.4.2. Gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions;

E4.4.3. Arrive at its findings and recommendation by majority vote and ensure that its findings are supported by a preponderance of the evidence; and

E4.4.4. Maintain a record of its proceedings.

#### E4.5. COUNSEL FOR MISSING PERSON

E4.5.1. The Secretary concerned shall appoint counsel to represent each person named in the inquiry. If the absence or missing status of two or more persons may be factually related, the Secretary concerned shall appoint one counsel to represent all such persons. If a conflict of interest results, then the missing person's counsel shall report this to the Secretary concerned who shall then appoint such additional counsel as is necessary. The missing person's counsel represents the interests of the missing person and not those of any member of the person's family or other interested parties. The Secretary concerned shall make known the identity of the missing person's counsel

to the primary next of kin and to the previously designated person. Attachment E4.A2. of this enclosure is a sample letter that can be used to notify the primary next of kin or the previously designated person of the identity of the missing person's counsel.

E4.5.2. To be appointed a missing person's counsel, a person must:

E4.5.2.1. Be a judge advocate;

E4.5.2.2. Be a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; or

E4.5.2.3. If other than a judge advocate, be a member of the bar of a Federal court or of the highest court of a State.

E4.5.2.4. In addition, the person must be certified as competent to perform his or her duties by the Judge Advocate General of the Armed Force of which he or she is a member or, if a civilian, the Secretary concerned who appointed the Board;

E4.5.2.5. Have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons the inquiry covers; and

E4.5.2.6. Have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

E4.5.3. A missing person's counsel:

E4.5.3.1. Shall have access to all facts and evidence the Board considers during the proceedings;

E4.5.3.2. Shall observe all official activities of the Board during such proceedings;

E4.5.3.3. May question witnesses before the Board; and

E4.5.3.4. Monitor (i.e., observe) the deliberations of the Board.

E4.5.4. A missing person's counsel shall assist the Board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The missing person's primary next of kin and any other previously

designated person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

E4.5.5. A missing person's counsel shall conduct an independent review of the Board's report. This review shall be made an official part of the Board's record and shall accompany the Board's report to the Secretary concerned.

#### E4.6. ACCESS TO PROCEEDINGS

The proceedings of the Board shall be closed to the public (including the primary next of kin, other members of the immediate family, and the previously designated person of the missing person(s)).

#### E4.7. REPORT OF THE BOARD

E4.7.1. DD Form 2811, "Report of Proceedings by Initial/Subsequent Board of Inquiry or Further Review Board," is found at attachment E4.A3. of this enclosure and shall be used in the preparation of the Board's report.

E4.7.2. The Board shall submit to the Secretary concerned its report that shall include:

E4.7.2.1. A discussion of the facts and evidence the Board considered;

E4.7.2.2. The Board's recommendation with respect to each person the report covers;

E4.7.2.3. Disclosure of whether the Board reviewed classified documents and information or used them otherwise in forming its recommendations; and

E4.7.2.4. The missing person's counsel's independent review of the Board's report.

E4.7.3. An initial Board of inquiry may not recommend that a person be declared dead unless:

E4.7.3.1. Credible evidence exists to suggest that the person is dead;

E4.7.3.2. The United States possesses no credible evidence that suggests that the person is alive; and

E4.7.3.3. Representatives of the United States:

E4.7.3.3.1. Have completely searched the area where the person was last seen (unless, after making a good faith effort to obtain access to the area, the representatives are not granted access); and

E4.7.3.3.2. Have examined the records of the Government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to the records, the representatives are not granted access).

E4.7.3.4. A flow chart setting forth the elements required for recommending a status of death is found at attachment E4.A4. of this enclosure.

E4.7.4. If the initial board of inquiry recommends that a missing person be declared dead, the Board shall include in the report of the Board the following:

E4.7.4.1. A detailed description of the location where the death occurred;

E4.7.4.2. A statement of the date on which the death occurred;

E4.7.4.3. A description of the location of the body, if recovered; and

E4.7.4.4. If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

E4.7.5. The initial board of inquiry shall submit its report to the Secretary concerned not later than 30 calendar days after its appointment. Evidence that is considered by the Board in forming its recommendation shall be made a part of the official record. The evidence shall be submitted to the Secretary concerned when the Board submits its report. The report may include a classified annex.

E4.7.6. The report may not be made public (except to the primary next of kin, the other members of the immediate family, and to any other previously designated person of the person) until one year after the date on which the report is submitted. If the report is classified or the report contains a classified annex, no classified material

therein may be made public or be made available to the primary next of kin, the other members of the immediate family, or to any other previously designated person of the person.

#### **E4.8. DETERMINATION BY SECRETARY**

E4.8.1. The Secretary concerned shall review the report not later than 30 calendar days following its receipt.

E4.8.2. The Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the Board for further action.

E4.8.3. If the Secretary determines that the report is complete and free of administrative error, the Secretary shall determine the status of the missing person(s), including whether the person(s) shall be declared:

E4.8.3.1. Missing;

E4.8.3.2. Deserted;

E4.8.3.3. Absent without leave; or

E4.8.3.4. Dead.

E4.8.4. The report, including any evidence considered by the Board, shall be filed with the Secretary concerned or with his or her designee. A copy of the Board's report shall be placed in the missing person's case resolution file.

#### **E4.9. REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS**

Not later than 30 calendar days after the date on which the Secretary determines status, the Secretary shall take reasonable actions to provide to the primary next of kin, the other members of the immediate family, and any other previously designated person:

E4.9.1. An unclassified summary of the unit commander's preliminary assessment and recommendation and the report of the Board (including the names of the Board members); and

E4.9.2. Notice that the United States will conduct a subsequent inquiry into the whereabouts and status of the missing person(s) upon the earlier of:

E4.9.2.1. On or about one year after the date of the first official notice of the disappearance; or

E4.9.2.2. Information becomes available that may result in a change in status.

E4.9.3. Located at attachment E4.A5. of this enclosure is a sample letter, to accomplish the above, that the Secretary concerned can address to the primary next of kin, other members of the immediate family, and the previously designated person.

#### E4.10. TREATMENT OF DETERMINATION

Any determination of the status of a missing person by the Secretary concerned shall be treated as the determination of the status of the person by all Agencies and Activities of the United States.

#### E4.11. EXTENSION OF TIME LIMIT

Extensions of time may be requested, and extensions granted, on the same basis as described in section E3.4.

#### Attachments - 5

E4.A1. Memorandum Appointing Initial Board of Inquiry

E4.A2. Letter, to Primary Next of Kin or Previously Designated Person, Advising of Identity of Missing Person's Counsel

E4.A3. DD Form 2811: Report of Proceedings by Initial/Subsequent Board of Inquiry or Further Review Board--SAMPLE

E4.A4. Flow Chart: Recommendation of Status of Death

E4.A5. Letter, to Primary Next of Kin, Other Members of the Immediate Family, or the Previously Designated Person, to Accompany the Report of the Initial Board of Inquiry



E4.A1. ATTACHMENT 1 TO ENCLOSURE 4

MEMORANDUM APPOINTING INITIAL BOARD OF INQUIRY

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Appointment of Initial Board of Inquiry

1. An initial board of inquiry is hereby appointed, in accordance with DoDI 2310.5, for the purpose of determining the whereabouts and status of certain persons pursuant to the provisions of the Missing Persons Act (10 United States Code Sections 1501-1513). Period of this appointment is not to exceed *[length of period]* from the date of this memorandum.

2. The following are appointed to the initial board of inquiry:

COL John E. Jones, 123-45-6789, HQ 2<sup>nd</sup> Brigade, 82<sup>nd</sup> Division (Abn), Fort Bragg, NC 28307, Board Member

COL Ronald L. Liotta, 345-67-8912, U.S. Army Military District of Washington, Washington, DC 20319, Alternate Member

COL William J. Harvey, 678-90-1234, The Army Staff, Washington, DC 20310  
Alternate Member

Mary A. Walker, 234-56-7890, Civilian, Walter Reed Army Medical Center, Washington, DC  
Alternate Member

LTC I. M. Criss, 987-65-4321, OTJAG (Admin Law Division), Washington, DC 20310  
Legal Counsel to the Board

MAJ Jerome F. Gravel, 567-89-1234, U.S. Total Army Personnel Command, Washington, DC 22332, Counsel for Missing Persons

3. The Board will meet at the call of the Board President. Unless otherwise directed by the appointing authority, it will meet only at *[specific location]*. It will use the procedures set forth in DoDI 2310.5, *[supplemented by the procedures set forth in (service implementing regulation, if any)]*. The Board will serve until adjourned by the Board President.

4. The Board will cause to be prepared a report of proceedings in accordance with guidance provided in *[implementing service regulation, if any]* and submit to the Secretary of the *[military department appointing the board]* its recommendation within 30 calendar days. If the Board recommends that any person be declared dead, it shall first ensure that the requirements of DoDI 2310.5, subsections E4.7.3. and E4.7.4. are met.

[Secretary Concerned]

**Distribution:**

**Board Members  
Legal Counsel to the Board  
Counsel for Missing Persons**

E4.A2. ATTACHMENT 2 TO ENCLOSURE 4

LETTER, TO PRIMARY NEXT OF KIN OR PREVIOUSLY DESIGNATED  
PERSON, ADVISING OF IDENTITY OF MISSING PERSON'S COUNSEL

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

*ADDRESSEE:*

*Name of primary next of kin or previously designated person*

*Street*

*City, State Zip Code*

Dear *[Name of primary next of kin; previously designated person]*:

It is my understanding that you are the primary next of kin *[or the previously designated person]* of *[Rank, if any, and name of missing person]*. I am writing to inform you that an initial board of inquiry will convene to make a recommendation concerning the whereabouts and status of *[Rank, if any, and name of missing person]*. The initial board of inquiry is required to submit a report to the *[Secretary concerned]* not later than 30 calendar days after the date of appointment. Additionally, I am writing to advise of the identity of the person who will represent the interests of *[Rank, if any, and name of missing person]* during this process.

*[Rank, if any, and name of missing person's counsel]* has been appointed as "missing person's counsel" to represent the interests of *[Rank, if any, and name of missing person]* during the initial board of inquiry process. As counsel for *[Rank, if any, and name of missing person]*, *[Rank, if any, and name of missing person's counsel]* shall have access to all facts and evidence considered by the board during the proceedings. *[Rank, if any, and name of missing person's counsel]* will also observe all official activities of the board during its proceedings, may question witnesses before the board, and will monitor (i.e., observe) the deliberations of the board. Additionally, *[Rank, if any, and name of missing person's counsel]* shall assist the board in ensuring that all information concerning *[Rank, if any, and name of missing person]* case is collected, logged, filed, and safeguarded.

*[Rank, if any, and name of missing person's counsel]* does not represent the interests of any member of *[Rank, if any, and name of missing person]* family or other interested parties. However, you have the right to submit information to *[Rank, if any, and name of missing person's counsel]* relative to *[Rank, if any, and name of missing person]* disappearance or status. If you intend to submit information relative to the disappearance of *[Rank, if any, and name of*

*missing person*], you should contact *[Rank, if any, and name of missing person's counsel]* as soon as possible to find out when this information must be submitted. *[Rank, if any, and name of missing person's counsel]* can be reached via mail at *[address]* or telephonically by calling *[telephone number]*.

Sincerely yours,

(SIGNATURE BLOCK)

## E4.A3. ATTACHMENT 3 TO ENCLOSURE 4

REPORT OF PROCEEDINGS BY INITIAL/SUBSEQUENT BOARD OF INQUIRY  
OR FURTHER REVIEW BOARD--SAMPLE

REPORT OF PROCEEDINGS BY INITIAL/SUBSEQUENT BOARD OF INQUIRY OR FURTHER REVIEW BOARD (For use of this form, see DODI 2310.5; the proponent agency is OSD/DPMO)			
If more space is required in filling out any portion of this form, attach additional sheets			
<b>SECTION - I APPOINTMENT</b>			
1. APPOINTING AUTHORITY Memorandum, Secretary of the Air Force, subject: Appointment of an Initial Board of Inquiry		2. DATE APPOINTED (YYYYMMDD) 20010624	
(Attach Enclosure 1: Letter of appointment or summary of oral appointment data.)			
<b>SECTION II - SESSIONS</b>			
3. TYPE OF BOARD (X one)			
<input checked="" type="checkbox"/> INITIAL BOARD OF INQUIRY <input type="checkbox"/> SUBSEQUENT BOARD OF INQUIRY <input type="checkbox"/> FURTHER REVIEW BOARD			
4. LOCATION OF SESSION Air Force Pentagon, Room 4E123, Washington, DC		5. DATE (YYYYMMDD) 20010701	
6. PERSONS PRESENT (List names of all attending [member(s), legal counsel to the board, missing person(s)' counsel, primary next of kin, other members of the immediate family, previously designated person, retained counsel]. After each name, indicate capacity, e.g., Member, Missing Person's Counsel.)			
Col John E. Jones, Board President Col Ronald L. Liotta, Board Member Col William J. Harvey, Board Member LtCol I. M. Criss, Legal Counsel to the Board Maj Jerome F. Gravel, Missing Person's Counsel			
<b>SECTION III - CHECKLIST FOR PROCEEDINGS</b>			
NOTE: Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur during this board			
PART A. COMPLETE IN ALL CASES			YES NO N/A
7. ENCLOSURES: Are the following enclosed? (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?			X
b. All other written communications to or from the appointing authority?			X
c. Explanation by the board of any unusual delays, difficulties, irregularities, or other problems?			X
d. Any other significant papers (other than evidence) relating to administrative aspects of the board?			X
8. EXHIBITS			
a. Is an index of all evidence considered by the board attached to the board's report?			X
b. Are all items considered as evidence forwarded to the appointing authority with the board's report?			X
c. Is the location of the original evidence indicated?			X
9. Were the member(s), counsel for the board, and missing person's counsel present during the findings and recommendation?			X

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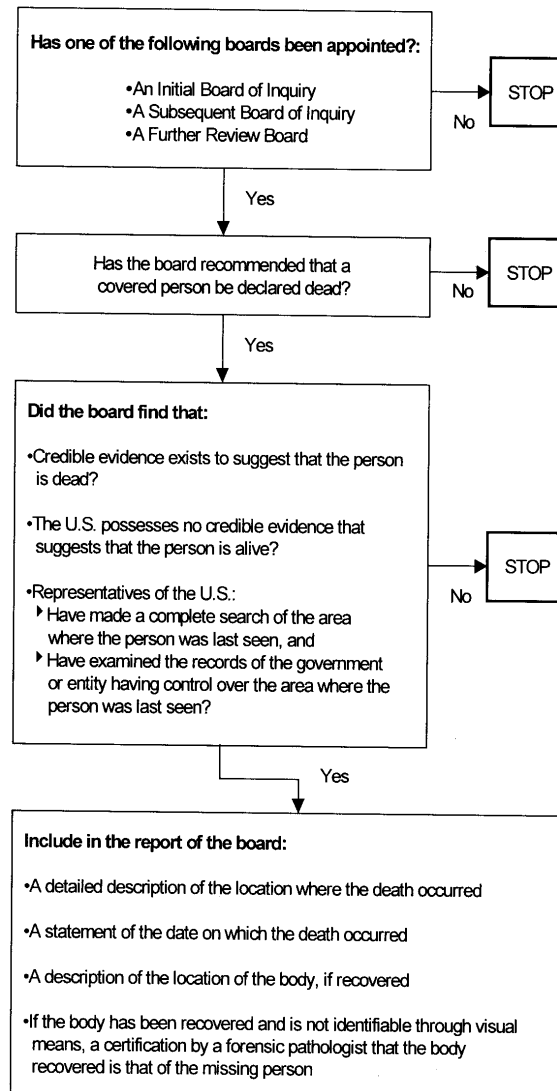
SECTION III - CHECKLIST FOR PROCEEDINGS (Continued)			
PART B - COMPLETE ONLY FOR INITIAL BOARDS OF INQUIRY			
10. DUTIES OF THE INITIAL BOARD OF INQUIRY	YES	NO	N/A
a. Did the board collect, develop, investigate, record, and safeguard all facts and evidence (such as documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information [whether classified or unclassified]) relating to the disappearance or whereabouts and status of each person covered by the inquiry?	X		
b. Did the board gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions?	X		
c. Did the board collect appropriate documentation of the facts and evidence covered by the board's investigation?	X		
d. Did the board analyze the facts and evidence?	X		
e. Did the board make findings based on its analysis of the facts and evidence?	X		
f. Did the board draw conclusions as to the current whereabouts and status of the person?	X		
g. Did the board maintain a record of its proceedings?	X		
h. With respect to each person covered by the inquiry, did the board recommend that the person be placed in a missing status or be declared to have deserted, to be absent without leave, or to be dead?	X		
PART C - MISSING PERSON'S COUNSEL (All boards)			
11. a. Has the identity of the missing person's counsel been made known to the primary next of kin and to the previously designated person?	X		
b. Did the missing person's counsel have access to all facts and evidence considered by the board during the proceedings?	X		
c. Did the missing person's counsel observe all official activities of the board during the proceedings?	X		
d. Did the missing person's counsel have the opportunity to question witnesses appearing before the board?	X		
e. Did the missing person's counsel monitor (i.e., observe) the deliberations of the board?	X		
f. Did the missing person's counsel assist the board in ensuring that all appropriate information concerning the case was collected, logged, filed, and safeguarded?	X		
g. Did the missing person's counsel review the board's report and submit to the appointing authority an independent review of that report?	X		
h. Has the missing person's counsel's review of the board's report been made an official part of the board's record?	X		
PART D - RECOMMENDATION OF DEATH (All boards)			
12. a. Does credible evidence exist to suggest that the person is dead?		X	
b. Does the United States possess any credible evidence to suggest that the person is alive?	X		
c. Have representatives of the United States made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to the area, the representatives are not granted access)?		X	
d. Have representatives of the United States examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to the records, the representatives are not granted access)?		X	
13. If the board makes a recommendation that a missing person be declared dead, does the board's report include the following:			
a. A detailed description of the location where the death occurred?			X
b. A statement of the date on which the death occurred?			X
c. A description of the location of the body, if recovered?			X
d. If the body has been recovered and is not identifiable through visual means, did a forensic pathologist certify that the body recovered is that of the missing person?			X
PART E - REPORT OF THE BOARD (All boards)			
14. a. Does the board's report include a discussion of the facts and evidence considered by the board?	X		
b. Does the board's report contain the board's recommendation with respect to each person covered by the report?	X		
c. Does the board's report disclose whether classified documents and information were reviewed by the board or were otherwise used by the board in forming its recommendation?	X		
d. Is the board's report submitted not later than 30 days after the date of the board's appointment? (Initial boards of inquiry only)	X		
PART F - COMPLETE ONLY FOR SUBSEQUENT BOARDS OF INQUIRY AND FURTHER REVIEW BOARDS			
15. SUBSEQUENT BOARDS OF INQUIRY ONLY:			
a. Did the board review the commander's preliminary assessment and recommendation and the initial board's report?			
b. Did the board collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person during the initial board of inquiry process?			

SECTION III - CHECKLIST FOR PROCEEDINGS (Continued)					
PART F (Continued)			YES	NO	N/A
<b>16. FURTHER REVIEW BOARDS ONLY:</b>					
a. Did the board review the commander's preliminary assessment and recommendation, the report of the initial board of inquiry, and the report of the subsequent board of inquiry?					
b. Did the board collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person during the subsequent board of inquiry process?					
<b>17. BOTH SUBSEQUENT BOARDS OF INQUIRY AND FURTHER REVIEW BOARDS:</b>					
a. Did the board draw conclusions as to the whereabouts and status of the person?					
b. Did the board consider the commander's preliminary assessment and recommendation, reports of any previous boards, all other evidence, and enter a determination of whether the status of the person should be continued or changed?					
<b>PART G - ATTENDANCE OF CERTAIN INTERESTED PERSONS AT PROCEEDINGS</b>					
18. a. Were the missing person's primary next of kin, other members of the immediate family, and any other previously designated person notified, not less than 60 days before the first meeting of the board, of their opportunity to attend the proceedings of the board? (Subsequent Boards of Inquiry and Further Review Boards only)					X
b. Have the names and capacities of interested persons been entered in Section II above?					X
<b>SECTION IV - FACTS AND EVIDENCE CONSIDERED BY THE BOARD</b>					
<p><b>19. DISCUSS HEREIN THE FACTS AND EVIDENCE CONSIDERED BY THE BOARD:</b></p> <p>1. DD Form 2812, "Commander's Preliminary Assessment and Recommendation Regarding Missing Person", recites that a midair puff of smoke was observed in the vicinity of Arrow 3, that Arrow 3 called out, "I'm hit," that Arrow 3 was trailing smoke when it flew upright into a cloud deck, that three minutes later a fire was seen burning on the ground and what may have been a parachute was seen in the air, and that a garbled radio transmission said words to the effect of "I'm clear, I'm clear!" which may have been Arrow 3's survival radio.</p> <p>2. Statement of Arrow 1, flight leader (DD Form 2812, Attachment 1): Arrow 1 says that he observed Arrow 3's aircraft, after seeing the puff of smoke in its vicinity, and that Arrow 3's aircraft was intact and flying upright. About three seconds after seeing the puff of smoke, however, Arrow 1 heard Arrow 3 exclaim over the radio that he (Arrow 3) had been hit. Arrow 1 did not see any surface-to-air missiles. Arrow 1 did not see any ground fires prior to this loss incident but did see the ground fire afterward.</p> <p>3. Statement of Arrow 2 (DD Form 2812, Attachment 2): Arrow 2 is not certain he saw a parachute due to the angle of the sun glinting on his aircraft but feels reasonably sure that it was a parachute he saw.</p> <p>4. Statement of Arrow 4 (DD Form 2812, Attachment 3): Arrow 4, Arrow 3's wingman, says Arrow 3 was not inverted when he saw it enter the cloud bank while trailing smoke. The radio transmission he heard was in English and, although garbled, he is certain that he heard an American voice say, "I'm clear, I'm clear!" He is personally convinced that the voice he heard was that of Arrow 3.</p> <p>5. Statement of 85th Wing weather officer (DD Form 2812, Attachment 4): Patchy, billowy layers of clouds were present over the target area that could have obstructed both lateral and vertical lines of sight and could have prevented seeing clearly both the fire on the ground and the parachute in the air.</p> <p>6. Statement of 85th Wing intelligence officer (DD Form 2812, Attachment 5): a) Arrow 3 was being painted by hostile radar at the time of the loss incident, b) four surface-to-air missiles were launched by hostile forces on the day of the loss; two of them were in the vicinity and time frame of Arrow 3's loss, and c) no hostile aircraft were in the air, in the vicinity of the incident, on the day of the loss.</p> <p>7. Transcription of radio contacts of friendly forward radar site (DD Form 2812, Attachment 6) confirms flight's reported radio transmissions.</p> <p>8. Extract of maintenance records (DD Form 2812, Attachment 7) show that a) Arrow 3 had not recently returned from depot or had an engine change, b) the aircraft would not have required depot maintenance for another 175 flying hours, and c) Arrow 3 was not overdue for any major inspections.</p>					

<b>SECTION V - FINDINGS AND CONCLUSIONS</b>	
<p><b>20. THE BOARD, HAVING CAREFULLY ANALYZED THE FACTS AND EVIDENCE, DETERMINES THAT THE FOLLOWING FINDINGS ARE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE:</b></p> <ol style="list-style-type: none"> <li>1. That at 1500 hours on 13 June 2001, Capt JOHN A. ROE, U.S. Air Force, was piloting an F-15C aircraft in a flight consisting of four such aircraft.</li> <li>2. That Capt ROE's aircraft was hit by a hostile surface-to-air missile during the flight.</li> <li>3. That Capt ROE exited the aircraft, deployed his parachute, and was last seen drifting toward the ground by means of his parachute.</li> <li>4. That Capt ROE said during his parachute descent, via his survival radio, that he was clear of the aircraft.</li> <li>5. That no further evidence exists, at this time, as to the fate of Capt ROE.</li> </ol>	
<p><b>21. IN VIEW OF THE ABOVE FINDINGS, THE BOARD CONCLUDES AS TO THE CURRENT WHEREABOUTS AND STATUS OF THE PERSON THAT THE PERSON IS:</b></p> <p style="text-align: center;">MISSING</p>	
<b>SECTION VI - RECOMMENDATION</b>	
<p><b>22. CONSIDERING THE ABOVE FINDINGS AND CONCLUSIONS, THE BOARD RECOMMENDS:</b></p> <p style="text-align: center;">That the Secretary of the Air Force determine that Capt JOHN A. ROE, 123-45-6789, U.S. Air Force, be declared to be MISSING.</p>	
<input checked="" type="checkbox"/> X	<p><b>23. X HERE IF CLASSIFIED DOCUMENTS AND INFORMATION WERE REVIEWED BY THE BOARD OR WERE OTHERWISE USED BY THE BOARD IN FORMING ITS RECOMMENDATION.</b></p>
<b>SECTION VII - AUTHENTICATION</b>	
<p><b>24. THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE.</b></p>	
<p>b. SIGNATURE OF PRESIDENT</p> <p style="text-align: center;">/SIGNED/</p>	<p>a. DATE (YYYYMMDD)</p> <p style="text-align: center;">20010702</p>
<p>d. SIGNATURE OF MEMBER</p> <p style="text-align: center;">/SIGNED/</p>	<p>c. SIGNATURE OF MEMBER</p> <p style="text-align: center;">/SIGNED/</p>
<p>e. SIGNATURE OF MISSING PERSON'S COUNSEL</p> <p style="text-align: center;">/SIGNED/</p>	<p>d. SIGNATURE OF MEMBER</p> <p style="text-align: center;">/SIGNED/</p>
<b>SECTION VIII - ACTION BY APPOINTING AUTHORITY</b>	
<p><b>25. a. THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE</b></p> <p> <input checked="" type="checkbox"/> INITIAL BOARD OF INQUIRY            <input type="checkbox"/> SUBSEQUENT BOARD OF INQUIRY            <input type="checkbox"/> FURTHER REVIEW BOARD       </p> <p>IS:</p> <p> <input checked="" type="checkbox"/> APPROVED            <input type="checkbox"/> DISAPPROVED            <input type="checkbox"/> APPROVED WITH THE FOLLOWING EXCEPTIONS/SUBSTITUTIONS       </p> <p><i>(If the appointing authority returns the proceedings to the board for further proceedings or corrective action, attach that correspondence for a summary, if oral as a numbered enclosure.)</i></p>	
<p>b. SIGNATURE</p> <p style="text-align: center;">/SIGNED/</p>	<p>c. DATE (YYYYMMDD)</p> <p style="text-align: center;">20010722</p>



## E4.A4. ATTACHMENT 4 TO ENCLOSURE 4

FLOW CHART: RECOMMENDATIONS OF STATUS OF DEATH

E4.A5. ATTACHMENT 5 TO ENCLOSURE 4

LETTER, TO PRIMARY NEXT OF KIN, OTHER MEMBERS OF THE  
IMMEDIATE FAMILY, OR THE PREVIOUSLY DESIGNATED PERSON, TO  
ACCOMPANY THE REPORT OF THE INITIAL BOARD OF INQUIRY

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

*ADDRESSEE:*

*Name of primary next of kin, other members of the  
immediate family, or the previously designated person  
Street  
City, State Zip Code*

Dear *[Name of Addressee]*:

It is my understanding that you are the primary next of kin *[or a member of the immediate family or the previously designated person]* of *[Rank, if any, and name of missing person]*. I am writing to inform you that upon the recommendation of an initial board of inquiry the Secretary of the *[military department]* has entered a determination regarding *[Rank, if any, and name of missing person]* status. The determination is that *[Rank, if any, and name of missing person]* is declared to *[be missing, have deserted, be absent without leave, be dead]*. This determination was entered on *[insert date]*.

Enclosed for your information is both an unclassified summary of *[Rank, if any, and name of missing person]* unit commander's preliminary assessment and recommendation and the report of the initial board of inquiry. Included with the board's report are the names of the members of the board.

The United States will conduct a subsequent inquiry into *[Rank, if any, and name of missing person]* whereabouts and status on or about one year after the date of the first official notice of *[his/her]* disappearance. If before that time information is received that may result in a change in *[Rank, if any, and name of missing person]* status, a subsequent inquiry will be conducted.

Sincerely,

(SIGNATURE BLOCK)

E5. ENCLOSURE 5  
SUBSEQUENT BOARDS OF INQUIRY

E5.1. SUBSEQUENT BOARD OF INQUIRY

E5.1.1. A flow chart setting forth the elements of subsequent boards of inquiry is found at attachment E5.A1. of this enclosure.

E5.1.2. During the year following the date of the transmission of a commander's initial report with respect to a missing person:

E5.1.2.1. Credible information may become available.

E5.1.2.2. The information may result in a change of that person's status as determined by the Secretary based upon the recommendation of an initial board of inquiry.

E5.1.2.2.1. If so, the Secretary concerned shall appoint a subsequent board of inquiry to inquire into the information.

E5.1.3. In the absence of information referred to in paragraph E5.1.2., the Secretary concerned shall:

E5.1.3.1. Appoint a subsequent board of inquiry to inquire into the whereabouts and status of a missing person on or about 1 year after the date of the transmission of a commander's initial report concerning the person.

E5.1.4. If it appears to the Secretary concerned that the absence or missing status of two or more persons is factually related, the Secretary concerned may appoint one subsequent board of inquiry to inquire into the whereabouts and status of all such persons.

E5.1.5. A sample form of appointment order at attachment E4.A1. to enclosure 4 may be adapted for use in appointing a subsequent board of inquiry.

E5.2. COMPOSITION OF THE BOARD

E5.2.1. A subsequent board of inquiry shall:

E5.2.1.1. Be composed of at least three members as follows:

E5.2.1.1.1. Officers having the grade of major or lieutenant commander or above (in the case of a Board that will inquire into the whereabouts and status of one or more members of the Armed Forces (and no civilian employees or contractors of the Department of Defense)).

E5.2.1.1.2. In the case of a Board that will inquire into the whereabouts and status of one or more DoD civilian employees or DoD contractors (and no members of the Armed Forces), the Board shall be composed of:

E5.2.1.1.2.1. Not less than three DoD employees whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS-13 of the General Schedule; and

E5.2.1.1.2.2. Members of the Armed Forces as the Secretary concerned considers advisable.

E5.2.1.1.3. In the case of a Board that will inquire into the whereabouts and status of both one or more members of the Armed Forces and one or more DoD civilian employees or DoD contractors:

E5.2.1.1.3.1. The Board shall include at least one officer having the grade of major or lieutenant commander or above and at least one DoD employee whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS-13 of the General Schedule; and

E5.2.1.1.3.2. The ratio of such officers to such employees on the Board shall be roughly proportional to the ratio of the number of members of the Armed Forces and the number of civilians who are the subjects of the Board's inquiry.

E5.1.1.2. Include at least one member whom:

E5.1.1.2.1. Has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

E5.1.1.2.2. Has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

E5.1.1.3. Have, for purposes of providing legal counsel to the Board, a judge

advocate assigned or an attorney appointed by the Secretary concerned who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons. Duties of the legal advisor are described at paragraph E4.2.3.

E5.2.2. The Secretary concerned shall designate one member of a subsequent board of inquiry as president of the Board. The president of the Board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

### E5.3. DUTIES OF THE SUBSEQUENT BOARD OF INQUIRY

E5.3.1. Review, if available, the commander's preliminary assessment and recommendation and the report of the initial board of inquiry.

E5.3.2. Collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person during the initial board of inquiry process.

E5.3.3. Draw conclusions as to the whereabouts and status of the person.

E5.3.4. Considering the evidence in paragraphs E5.3.1. and E5.3.2., determine whether, by a preponderance of the evidence:

E5.3.4.1. The status of the person should be continued or changed; or

E5.3.4.2. If appropriate, whether the person is accounted for (such as when credible evidence exists to support a determination that a person's remains have been destroyed and are unrecoverable).

E5.3.5. Submit to the Secretary concerned a report describing the findings and conclusions of the subsequent board of inquiry, together with a recommendation for a determination by the Secretary concerned regarding the whereabouts and status of the person.

### E5.4. COUNSEL FOR MISSING PERSONS

E5.4.1. The Secretary concerned shall appoint counsel to represent each person the subsequent board of inquiry covers. When circumstances permit, missing person's counsel should be the same individual who represented the missing person during the

initial board of inquiry. The identity of the missing person's counsel shall be made known to the primary next of kin and to the previously designated person. Attachment E4.A2. to enclosure 4 is a sample form of letter that can be used to notify the primary next of kin or the previously designated person of the identity of the missing person's counsel.

E5.4.2. The qualifications, rights, and duties of the missing person's counsel are described at paragraphs E4.5.2. through E4.5.5.

E5.4.3. The missing person's primary next of kin and any other previously designated person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

E5.4.4. The missing person's counsel's review of the Board's report shall be made an official part of the Board's record.

#### E5.5. ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS

E5.5.1. The missing person's primary next of kin, other members of the immediate family, and any other previously designated person may attend the proceedings of the subsequent board of inquiry.

E5.5.2. The Secretary concerned shall take reasonable actions to notify the missing person's primary next of kin, other members of the immediate family, and any other previously designated person of the opportunity to attend the proceedings of the Board. Such notice shall be provided not less than 60 calendar days before the first meeting of the Board. Attachment E5.A2. of this enclosure is a sample letter that can be used to notify the primary next of kin, other members of the immediate family, and any other previously designated person of their right to attend the Board proceedings and their rights in connection with their attendance.

E5.5.3. An individual receiving notice of the proceedings shall notify the Secretary concerned of the intent, if any, of that individual to attend the proceedings of the Board not later than 21 calendar days after the date on which the individual receives the notice.

E5.5.4. Each individual who notifies the Secretary concerned of the individual's intent to attend the proceedings of the Board:

E5.5.4.1. May, if the primary next of kin or the previously designated person, attend the proceedings of the Board with private counsel;

E5.5.4.2. Shall have access to the case resolution file of the missing person, to unclassified reports, if any, of the initial board of inquiry, and to any other unclassified information or documents relating to the whereabouts and status of the missing person;

E5.5.4.3. Shall be afforded the opportunity to present information at the proceedings of the Board that such individual considers to be relevant to those proceedings; and

E5.5.4.4. Shall be given the opportunity to submit in writing an objection to any recommendation of the Board regarding the status of the missing person provided:

E5.5.4.4.1. A letter of intent is submitted to the president of the Board not later than 15 calendar days after the date on which the recommendations are made; and

E5.5.4.4.2. The written objections are submitted to the president of the Board not later than 30 calendar days after the date on which the recommendations are made. The president of a Board shall include any timely objections to a recommendation of the Board in the report of the Board containing the recommendation.

E5.5.5. The primary next of kin, other members of the immediate family, and any other previously designated person attending the proceedings of a subsequent board of inquiry shall not be entitled to reimbursement by the United States for any costs. This would include travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses that the individual incurred attending such proceedings.

## E5.6. AVAILABILITY OF INFORMATION TO BOARDS

E5.6.1. A subsequent board of inquiry may secure directly from any Department or Agency of the United States any information that the Board considers necessary in

order to conduct the proceedings. Attachment E5.A3. of this enclosure is a sample letter that may be used in making a request.

E5.6.2. Upon written request from the president of a subsequent board of inquiry, the Head of a Department or Agency of the United States shall release the requested information to the Board. In releasing such information, the Head of the Agency or Activity shall initiate a classification review of the information requested and shall:

E5.6.2.1. Declassify to an appropriate degree classified information; or

E5.6.2.2. Release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

E5.6.2.3. Under the first alternative above, the Head of the Agency or Activity may determine that the information can be declassified in whole, downgraded in classification, redacted prior to release, or must remain classified at its current level. Under the second alternative, the Head of the Department or Agency could release the information outright so long as the Board member(s) and missing person's counsel possess the appropriate security clearance. In the event they do not possess the appropriate clearance, the Board president may report this circumstance to the appointing authority and request that a new subsequent board of inquiry be appointed with members possessing the proper clearance level. If neither of the alternative actions can be taken and the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the Board and to the missing person's counsel.

E5.6.3. The president of a Board shall close to persons who do not have appropriate security clearances the proceeding of the Board at which classified information is discussed. Participants at a proceeding of a Board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. Upon request by the Board president, the Secretary concerned shall assist the president in ensuring that classified information is not compromised through Board proceedings.

#### E5.7. RECOMMENDATION ON STATUS

E5.7.1. Upon completion of a subsequent board of inquiry, the Board shall make a recommendation, based upon findings that are supported by a preponderance of the evidence, as to the current whereabouts and status of each missing person covered by the inquiry. A majority vote shall determine the Board's findings and recommendation.



E5.7.2. The prerequisites for a subsequent board of inquiry recommending that a person be declared dead are located at paragraph E4.7.3.

E5.7.3. A flow chart setting forth the elements required for recommending a status of death is found at attachment E4.A4. to enclosure 4.

E5.7.4. If the subsequent board of inquiry makes a recommendation that a missing person be declared dead, the Board shall include in the report of the Board the information found in paragraph E4.7.4.

#### E5.8. REPORT OF THE BOARD

A subsequent board of inquiry shall submit to the Secretary concerned a report on the inquiry carried out by the Board, together with the evidence considered by the Board during the inquiry. Evidence that is considered by the Board in forming its recommendation shall be made a part of the official record of the Board. The evidence shall be submitted to the Secretary concerned at the time that the Board submits its report. Topics required to be included in the Board's report are contained in paragraph E4.7.2. The report may include a classified annex. DD 2811 is found at attachment E4.A3. to enclosure 4 and shall be used in preparation of the Board's report.

#### E5.9. ACTIONS BY SECRETARY CONCERNED

E5.9.1. Not later than 30 calendar days after the receipt of a report from a subsequent board of inquiry, the Secretary shall review:

E5.9.1.1. The report;

E5.9.1.2. The review of the report the missing person's counsel submitted to the Secretary; and

E5.9.1.3. The objections, if any, to the report submitted to the president of the board by the primary next of kin, other members of the immediate family, and any previously designated person.

E5.9.2. In reviewing the Board's report (including any written objections thereto), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the Board for further action on the report by the Board.

E5.9.3. Upon a determination by the Secretary that the report is complete and free of administrative error, the Secretary shall determine the status of each person the report covers.

#### E5.10. REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS

Not later than 60 calendar days after the date on which the Secretary concerned determines the status of a missing person, the Secretary shall provide the report to the primary next of kin, other members of the immediate family, and any other previously designated person. If the report is classified or the report contains a classified annex, no classified material therein may be made available to the primary next of kin, the other members of the immediate family, or to any other previously designated person of the person. If the determination continues the person in a missing status:

E5.10.1. The Secretary shall inform each of these individuals that the United States will conduct a further review board into the whereabouts and status of the person if the United States Government receives information in the future that may change the status of the person.

E5.10.2. Attachment E5.A4. of this enclosure is a sample letter, to accomplish the above, which the Secretary concerned can address to the primary next of kin, other members of the immediate family, and any other previously designated person to accompany the report of the subsequent board of inquiry.

#### E5.11. TREATMENT OF DETERMINATION

The determination of a missing person's status by the Secretary concerned, upon the recommendation by a subsequent board of inquiry, shall:

E5.11.1. Supersede the determination entered upon the recommendation by the initial board of inquiry; and

E5.11.2. Be treated as the determination of the status of the missing person by all Departments and Agencies of the United States.

E5.12. EXTENSION OF TIME LIMIT

Extensions of time may be requested, and extensions granted, on the same basis as described in section E3.4.

Attachments - 4

E5.A1. Flow Chart: Subsequent Boards of Inquiry

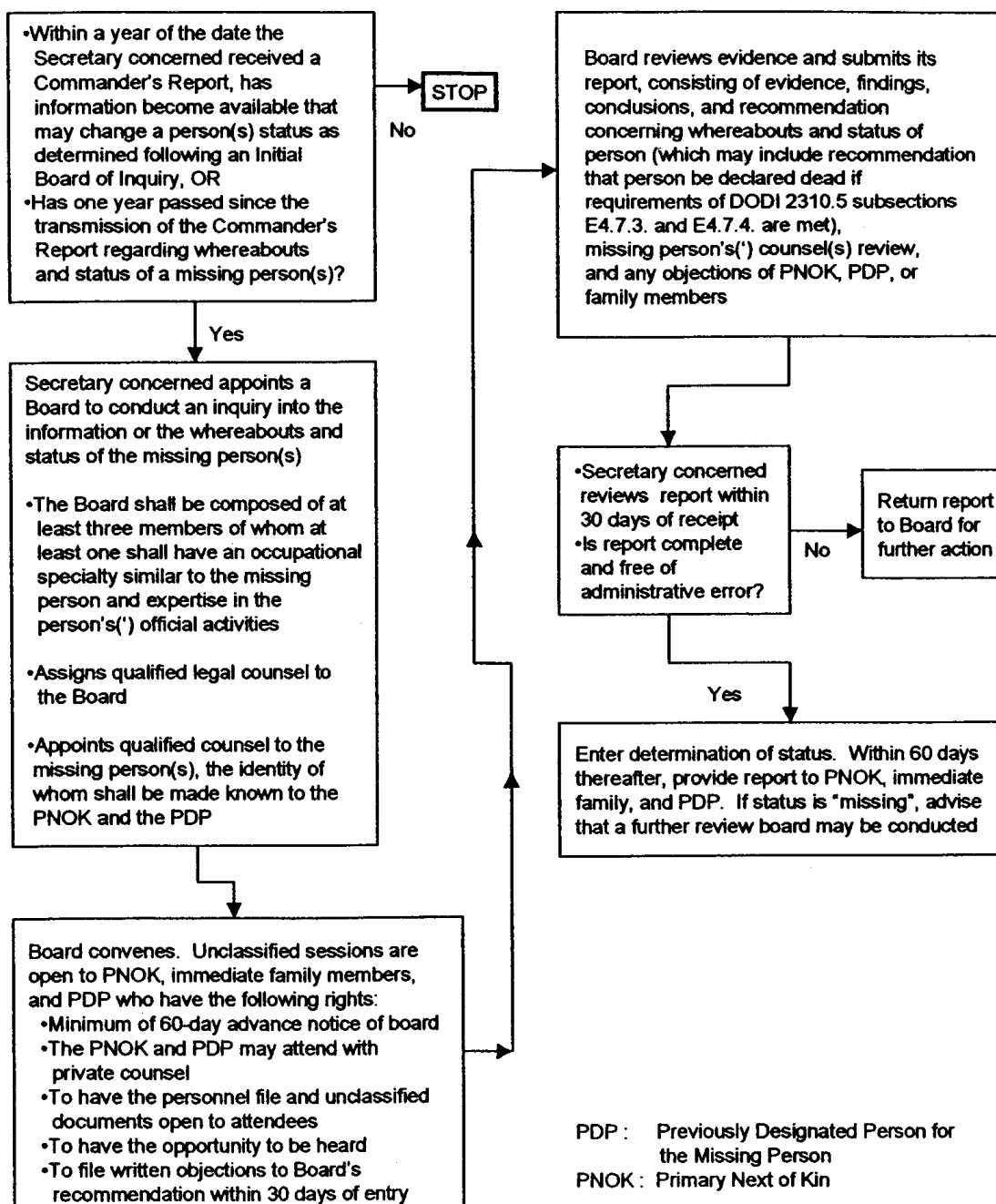
E5.A2. Letter to Primary Next of Kin, Other Members of the Immediate Family, and any other Previously Designated Person, Advising of Right to Attend Proceedings of the Subsequent Board of Inquiry, Further Review Board, or Preenactment Case Board

E5.A3. Letter to the United States Government Department or Agency Requesting Information

E5.A4. Letter to Primary Next of Kin, Other Members of the Immediate Family, and any other Previously Designated Person, to Accompany the Report of a Subsequent Board of Inquiry, Further Review Board, or Preenactment Case Board

## E5.A1. ATTACHMENT 1 TO ENCLOSURE 5

## SUBSEQUENT BOARDS OF INQUIRY



E5.A2. ATTACHMENT 2 TO ENCLOSURE 5

LETTER, TO PRIMARY NEXT OF KIN, OTHER MEMBERS OF THE  
IMMEDIATE FAMILY, AND ANY OTHER PREVIOUSLY DESIGNATED  
PERSON, ADVISING OF RIGHT TO ATTEND PROCEEDINGS OF THE  
SUBSEQUENT BOARD OF INQUIRY, FURTHER REVIEW BOARD, OR  
PREENACTMNET CASE BOARD

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

*ADDRESSEE:*

*Name of primary next of kin, other members of the  
immediate family, or any other previously designated person  
Street  
City, State Zip Code*

Dear *[Name of Addressee]*:

It is my understanding that you are the primary next of kin *[for a member of the immediate family or any other previously designated person]* of *[Rank, if any, and name of missing person]*. A subsequent board of inquiry *[or further review board or preenactment case board]* will convene on *[insert date of hearing which shall be not less than 60 calendar days before the first meeting of the board]* at *[location]* to review the whereabouts and status of *[Rank, if any, and name of missing person]*. I am writing to inform you that it is your right to attend these proceedings. If you choose to attend, you must notify the undersigned of your intent to attend within 21 calendar days following the date on which you receive this notice. A "Notice of Intent" is enclosed for your use in fulfilling this requirement.

If you notify the undersigned of your intent to attend the proceedings, you shall have the following rights:

- (1) If you are the primary next of kin or the previously designated person, you may attend the proceedings of the board with private counsel.
- (2) Access to the case resolution file of the missing person, to unclassified reports, if any, of the initial board of inquiry, and to any other unclassified information or documents relating to the whereabouts and status of the missing person.
- (3) To present information at the proceedings of the board that you consider to be relevant to those proceedings; and
- (4) To submit in writing an objection to any final recommendation of the board regarding the status of the missing person provided you submit:
  - (A) a letter addressed to the board president that is received not later than 15 calendar days after the date on which the recommendations are made; and
  - (B) the written objections to the board president so that they are received not later than 30 calendar days after the date on which the recommendations are made.

Unfortunately, your attendance at the board proceedings will not entitle you to be reimbursed by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) you may incur in attending the proceedings.

Sincerely yours,

(SIGNATURE BLOCK)

Enclosure:  
Notice of Intent

TO: *Preprinted address of Service  
casualty office or departmental  
office where notice should  
be mailed*

In regard to *[Rank, if any, and name of missing person]*, I am (please check one):

- ☐ The primary next of kin  
☐ A member of the immediate family  
☐ The previously designated person

I understand that the *[Military Department]* will conduct a review of *[Rank, if any, and name of missing person]* whereabouts and status on *[insert date of hearing which shall be not less than 60 calendar days before the first meeting of the board]*. I further understand that I am entitled to attend the proceedings of the review board so long as I return this notice to you within 21 calendar days after I received it. If I am the primary next of kin or the previously designated person, I understand that I may attend with private counsel. I also understand that I am entitled to reasonable access to the information upon which the review will be based and that I will have the opportunity to present information to the board that I consider relevant to the proceedings. I also understand that I can file a written objection to the board's recommendation, so long as I notify you in writing of this within 15 calendar days after the board enters its recommendation and that I submit it within 30 calendar days after entry of the recommendation. Finally, I understand that I will not be entitled to reimbursement by the United States for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by me in attending the proceedings.

Please check one of the following:

- ☐ I intend to be present at the review board  
☐ I waive my right to attend the review board

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

E5.A3. ATTACHMENT 3 TO ENCLOSURE 5

LETTER TO UNITED STATES GOVERNMENT DEPARTMENT OR AGENCY  
REQUESTING INFORMATION

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

**ADDRESSEE:**

*Head of Specific Department or Agency of the United States*  
*Office Address*  
*City, State Zip Code*

Dear *[Head of Specific Department or Agency of the United States]*:

Please be advised that a *[subsequent board of inquiry, further review board, or preenactment case board]* has been convened pursuant to the Missing Persons Act (10 United States Code Sections 1501-1513) for the purpose of determining the whereabouts and status of *[Rank, name and social security number of missing person]*. During the course of the board proceedings, it has come to our attention that the *[specific Department or Agency of the United States]* may possess information that this board considers necessary in order to conduct its proceedings. As president of the *[subsequent board of inquiry, further review board, or preenactment case board]*, I hereby request that the *[specific Department or Agency of the United States]* provide the following information to this board *[if classified information is sought, specify the lower level of security clearance possessed by the board president and the missing person's counsel]*:

*[Describe specifically the information sought.]*

This request is made pursuant to the authority granted me under the Missing Persons Act, 10 United States Code Section 1504(h) that reads:

“(h) Availability of information to boards.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

- (A) Declassify to an appropriate degree classified information; or
- (B) Release the information in a manner not requiring the removal of markings that indicate the classified nature of the information.

(3) (A) If a request for information under paragraph (2) covers classified



information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the Board making the request and the counsel for the missing person appointed under subsection (f).”

In the event you have any questions in your effort to comply with this request, the undersigned may be contacted at *[telephone number]*.

Sincerely yours,

*[Signature block]*  
Board President

E5.A4. ATTACHMENT 4 TO ENCLOSURE 5

LETTER, TO PRIMARY NEXT OF KIN, OTHER MEMBERS OF THE IMMEDIATE FAMILY, AND ANY OTHER PREVIOUSLY DESIGNATED PERSON, TO ACCOMPANY THE REPORT OF A SUBSEQUENT BOARD OF INQUIRY, FURTHER REVIEW BOARD, OR PREENACTMENT CASE BOARD

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

**ADDRESSEE:**

*Name of primary next of kin, other members of the immediate family, or any other previously designated person*

*Street*

*City, State Zip Code*

Dear *[Name of Addressee]*:

It is my understanding that you are the primary next of kin *[or a member of the immediate family or any other previously designated person]* of *[Rank, if any, and name of missing person]*. I am writing to inform you that upon the recommendation of a subsequent board of inquiry *[or further review board or preenactment case board]* the Secretary of the *[Military Department]* has entered a determination regarding *[Rank, if any, and name of missing person]* status. The determination is that *[Rank, if any, and name of missing person]* is *[enter determination on current whereabouts and status of missing person]*. This determination was entered on *[insert date]*.

For your information, an unclassified copy of the report of the subsequent board of inquiry *[or further review board or preenactment case board]* is enclosed. The board's report includes the names of the board members.

*[If the Secretary's determination continues the person in a missing status, insert this paragraph.]*

The United States will conduct a further review board to review *[Rank, if any, and name of missing person]* whereabouts and status if information is received in the future that may change *[his/her]* status.

Sincerely yours,

(SIGNATURE BLOCK)

E6. ENCLOSURE 6  
FURTHER REVIEW BOARDS

E6.1. FURTHER REVIEW BOARD

E6.1.1. A flow chart setting forth the elements of further review boards is found at attachment E6.A1. of this enclosure.

E6.1.2. Following a subsequent board of inquiry, the Secretary concerned shall appoint a further review board to inquire into the whereabouts and status of the person whenever:

E6.1.2.1. The United States Government receives information; and

E6.1.2.2. The information may result in a change in a missing person's status;

or

E6.1.2.3. The Secretary concerned deems it appropriate.

E6.2. ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION

E6.2.1. Whenever any United States intelligence agency or other element of the Government finds or receives information that may relate to a missing person, the receiving Agency shall promptly forward the information to the Defense Prisoner of War/Missing Personnel Office, 2400 Defense Pentagon, Washington, DC 20301-2400.

E6.2.2. Upon receipt of information relating to a missing person that has been forwarded by any United States Government office, the Director, DPMO shall as expeditiously as possible:

E6.2.2.1. Ensure that the information is added to the missing person's case resolution file; and

E6.2.2.2. Notify the following of the existence of the information:

E6.2.2.2.1. The designated missing person's counsel for that person;

E6.2.2.2.2. The primary next of kin and any previously designated person;

E6.2.2.2.3. The appropriate Service Casualty/Mortuary Affairs Office;  
and

E6.2.2.2.4. The Secretary concerned or his or her designee.

E6.2.2.2.5. Attachment E6.A2. of this enclosure is a sample letter that may be used to notify these persons or offices of the receipt of this information.

E6.2.3. The Director, DPMO, with the advice of the missing person's counsel, shall determine whether the information is significant enough to require a review by a further review board.

E6.2.4. If the Director, DPMO determines that such a board should be appointed, the director shall notify the Secretary concerned. The Secretary concerned shall appoint a further review board to inquire into the whereabouts and status of the missing person. If it appears that the information may affect the status of two or more missing persons, the Secretary concerned may appoint one further review board to inquire into the whereabouts and status of such persons. A sample appointment order is located at attachment E4.A1. to enclosure 4 that may be adapted for use in appointing a further review board.

### E6.3. COMPOSITION OF THE BOARD

E6.3.1. The composition of a further review board is the same as that described in paragraph E5.2.1. Duties of the legal advisor are described at paragraph E4.2.3.

E6.3.2. The Secretary concerned shall designate one member of a further review board as president of the Board. The president of the Board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the review.

### E6.4. DUTIES OF THE FURTHER REVIEW BOARD

E6.4.1. Review, if available, the commander's preliminary assessment and recommendation, the report of the initial board of inquiry, and the report of the subsequent board of inquiry.

E6.4.2. Collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person during the subsequent board of inquiry process.

E6.4.3. Draw conclusions as to the whereabouts and status of the person.

E6.4.4. Considering the evidence derived from paragraphs E6.4.1. and E6.4.2, determine whether, by a preponderance of the evidence, the status of the person should be continued or changed or, if appropriate, whether the person is accounted for.

E6.4.5. Submit to the Secretary concerned a report describing the findings and conclusions of the further review board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

#### E6.5. COUNSEL FOR MISSING PERSONS

E6.5.1. The Secretary concerned shall appoint counsel to represent each person covered by the further review board. The identity of the missing person's counsel shall be made known to the primary next of kin and to the previously designated person. Attachment E4.A2. to enclosure 4 is a sample letter that can be used to notify the primary next of kin or the previously designated person of the identity of the missing person's counsel.

E6.5.2. The qualifications, rights, and duties of the missing person's counsel are described at paragraphs E4.5.2. through E4.5.5.

E6.5.3. The missing person's primary next of kin and any other previously designated person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

E6.5.4. The missing person's counsel's review of the Board's report shall be made an official part of the Board's record.

#### E6.6. ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS

E6.6.1. The missing person's primary next of kin, other members of the immediate family, and any other previously designated person may attend the proceedings of the further review board.

E6.6.2. The duties of the Secretary concerned regarding sending of notice to interested persons are the same as those described in paragraph E5.5.2. The requirements imposed upon those persons receiving notice and their rights and obligations in connection with their attendance are the same as those described in paragraphs E5.5.3. through E5.5.5.

#### E6.7. AVAILABILITY OF INFORMATION TO BOARDS

E6.7.1. A further review board may request of any Department or Agency of the United States any information that the Board considers necessary in order to conduct the proceedings. Attachment E5.A3. to enclosure 5 is a sample letter that may be used in making a request.

E6.7.2. Actions to be taken by the Head of an Agency or Activity of the United States in response to a written request for information from the president of a further review board are found at paragraph E5.6.2. Action to be taken by the president of a Board when a person does not have the appropriate security clearance is found at paragraph E5.6.3.

#### E6.8. RECOMMENDATION ON STATUS

E6.8.1. Upon completion of a further review board, the Board shall make a recommendation, based upon findings that are supported by a preponderance of the evidence, as to the current whereabouts and status of each missing person covered by the Board. A majority vote shall determine the Board's findings and recommendation.

E6.8.2. The prerequisites for a further review board recommending that a person be declared dead are the same as those located at paragraph E4.7.3.

E6.8.3. A flow chart setting forth the elements required for recommending a status of death is found at attachment E4.A4. to enclosure 4.

E6.8.4. If the further review board makes a recommendation that a missing person be declared dead, the Board shall include in the report of the Board the information found in paragraph E4.7.4.

#### E6.9. REPORT OF THE BOARD

A further review board shall submit to the Secretary concerned a report on the review carried out by the Board. Evidence that is considered by the Board in forming its recommendation shall be made a part of the official record of the Board. The evidence shall be submitted to the Secretary concerned at the time that the Board submits its report. Topics required to be included in the Board's report are contained in paragraph E4.7.2. The report may include a classified annex. DD Form 2811 is found at attachment E4.A3. to enclosure 4 and shall be used to prepare the report.

#### E6.10. ACTIONS BY SECRETARY CONCERNED

Actions the Secretary concerned takes following receipt of a report from a further review board are the same as those located at paragraphs E5.9.1. through E5.9.3.

#### E6.11. REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS

Described in section E5.10. are the actions the Secretary concerned must take to provide the Board's report to certain persons and the time by which those actions must be accomplished.

#### E6.12. TREATMENT OF DETERMINATION

The determination of a missing person's status by the Secretary concerned, upon the recommendation by a further review board, shall:

E6.12.1. Supersede the determination entered upon the recommendation by the subsequent board of inquiry or previous further review board; and

E6.12.2. Be treated as the determination of the status of the missing person by all Agencies and Activities of the United States.

E6.13. EXTENSION OF TIME LIMIT

Extensions of time may be requested, and extensions granted, on the same basis as described in section E3.4.

Attachments - 2

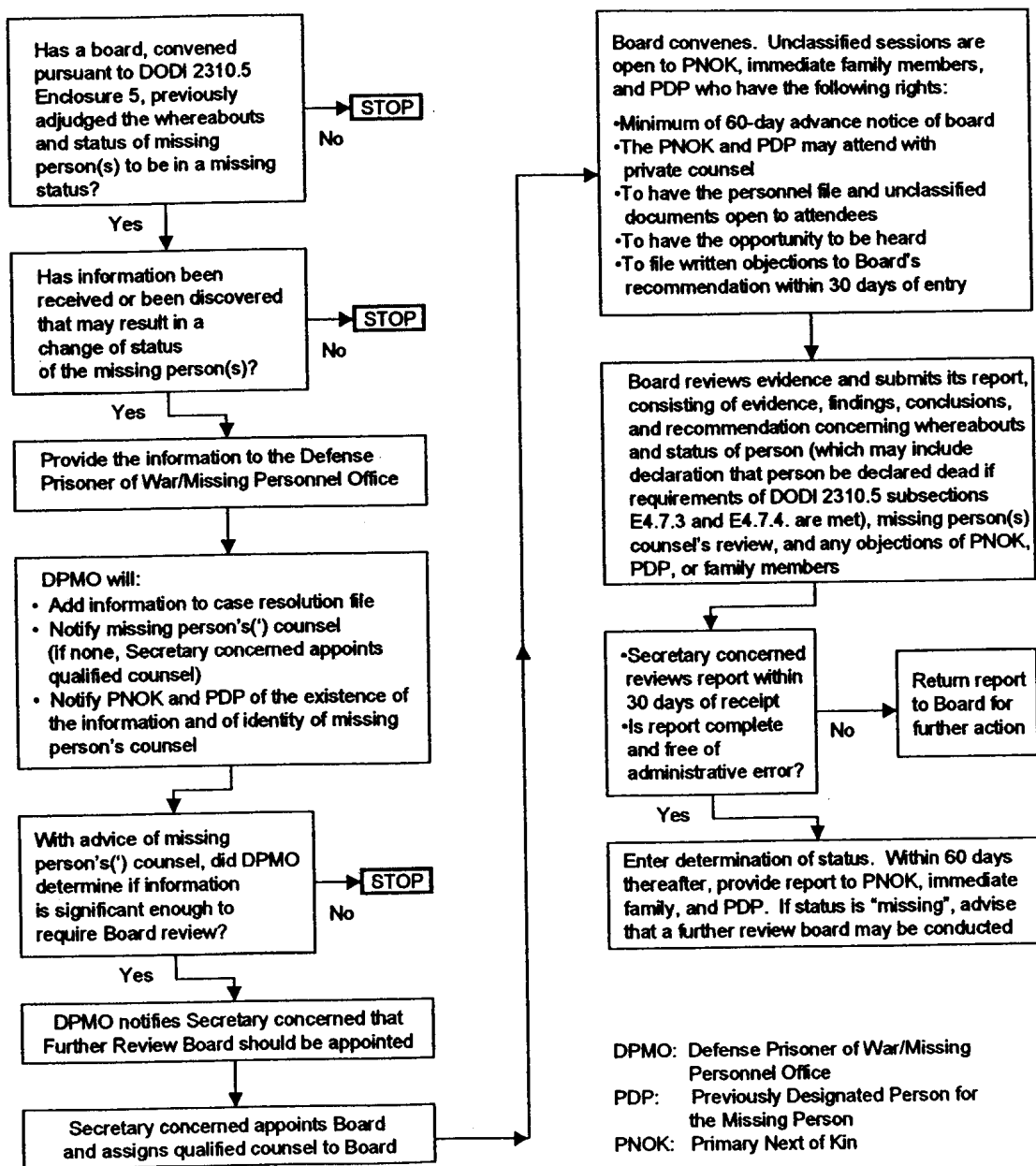
E6.A1. Flow Chart: Further Review Boards

E6.A2. Letter Advising of Information Relating to a Missing Person Upon  
Discovery or Receipt of Information



## E6.A1. ATTACHMENT 1 TO ENCLOSURE 6

## FURTHER REVIEW BOARDS



E6.A2. ATTACHMENT 2 TO ENCLOSURE 6

LETTER ADVISING OF INFORMATION RELATING TO A MISSING PERSON  
UPON DISCOVERY OR RECEIPT OF INFORMATION

(LETTERHEAD of  
Defense POW/Missing Personnel Office)

(OFFICE SYMBOL)

(DATE)

**ADDRESSEE:**

*Name of: missing person's counsel, primary next of kin,  
or any previously designated person*

*Street*

*City, State Zip Code*

Dear *[Name of Addressee]*:

I am informed that you are the *[missing person's counsel, primary next of kin, or the previously designated person]* of *[Rank, if any, and name of missing person]*. The United States government has received information relating to *[Rank, if any, and name of missing person]*. My purpose in writing is to inform you of the existence of this information and to advise you that this information has been added to *[Rank, if any, and name of missing person]* case resolution file.

With the advice of *[Rank, if any, and name of missing person's counsel]*, who has been appointed to represent the interests of *[Rank, if any, and name of missing person]*, I will determine whether the information is significant enough to require a review by a *[further review board or preenactment case board]*. If I determine that such a board should be appointed, I will notify the Secretary of the *[Military Department]*. The Secretary will then appoint a *[further review board or preenactment case board]* to conduct an inquiry into the whereabouts and status of *[Rank, if any, and name of missing person]*. In that event, your Service Casualty/Mortuary Affairs Office will again contact you with further instructions.

Sincerely yours,

(NAME)

Director

Defense POW/Missing Personnel Office

cf: *[appropriate Secretary concerned or designee and Service Casualty/Mortuary Affairs Office]*

## E7. ENCLOSURE 7

### CASE RESOLUTION FILES

#### E7.1. INFORMATION IN FILES

E7.1.1. When a commander recommends that a person be placed in a missing status, a case resolution file will be established. Many entities throughout DoD will have input into the creation of a case resolution file. Except for the protections accorded classified information, privileged information, and privacy protected information, the Secretary concerned shall, to the maximum extent practicable, ensure that the case resolution file of a missing person contains all information the United States possesses relating to the disappearance and whereabouts and status of the person.

E7.1.2. A typical case resolution file may include copies of the commander's report of the loss incident and associated information, contents of the Service member's personnel file, operational and tactical intelligence reports, and medical and dental records. Attachment E3.A2. of enclosure 3 contains a nonexclusive list, entitled "Commander's Checklist", of those items that should, if relevant, be included in the case resolution file. In addition to these items, the case resolution file should contain, where applicable, the reports of any boards (with all board members identified therein) including the report/results of the Armed Forces Identification Review Board. Contents of case resolution files are not limited to the above items.

E7.1.3. All reporting concerning the missing individual is forwarded to the Secretary concerned. The Secretary concerned shall ensure reports on missing persons reach the case resolution file. Case resolution files shall be updated periodically to coincide with board reviews or when new information becomes available.

#### E7.2. ESTABLISHMENT OF CASE RESOLUTION FILES FOR PRIOR CONFLICT CASES

E7.2.1. The Secretary concerned shall establish a case resolution file for each unaccounted for person who was classified as a prisoner of war or as missing in action during the Korean conflict and who:

E7.2.1.1. Was known to be or suspected to be alive at the end of that conflict; or

E7.2.1.2. Was classified as missing in action and whose capture was possible; and

E7.2.1.3. For which the Secretary has information relevant to that person's status. In the event no case resolution file exists for a person because of lack of information, the Secretary concerned shall create a file for such person upon receipt of new, credible information that is found, received, or identified after November 18, 1997.

E7.2.2. Unless already accomplished, the Secretary concerned shall establish a case resolution file for each person unaccounted for from the Cold War and the Indochina War era.

### E7.3. CLASSIFIED INFORMATION

E7.3.1. The Secretary concerned may withhold classified information from a case resolution file providing that the file contains:

E7.3.1.1. A notice that the withheld information exists; and

E7.3.1.2. A notice of the date of the most recent review of the classification of the withheld information.

E7.3.1.3. Attachment E7.A1. of this enclosure is entitled "Notice of Classified Information." This notice shall be posted in or on the case resolution file so as to be readily visible to persons reviewing the file. For additional information regarding treatment of classified information, refer to DoD 5200.1-R, "Information Security Program," January 17, 1997 (reference (e)).

E7.3.2. If the withheld classified information refers to one or more unnamed missing persons (the identity of whom the Secretary can deduce from a totality of the evidence), the Secretary shall ensure:

E7.3.2.1. That notice of that withheld information; and

E7.3.2.2. The notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of the other unnamed missing persons to which that information may apply.

E7.3.2.3. Notice (attachment E7.A1. of this enclosure) shall:

E7.3.2.3.1. Be posted in or on the case resolution file of the other unnamed missing person(s); and

E7.3.2.3.2. Be readily visible to the primary next of kin, members of the immediate family, and the previously designated person whenever one or more of them review the case resolution file of the missing person(s).

E7.3.3. The Secretary concerned, or his or her designee, shall:

E7.3.3.1. Ensure written notification is sent to the primary next of kin (and, in appropriate cases, any previously designated person and other adult members of the immediate family) of a missing person or of one or more unnamed missing persons:

E7.3.3.1.1. Of the existence of new, classified information;

E7.3.3.1.2. Advising that it has been added to the case resolution file;  
and

E7.3.3.1.3. That it is being withheld from the primary next of kin, members of the immediate family, and the previously designated person.

E7.3.3.1.4. The notification shall include a statement that the withheld information exists and reveal the date of the most recent review of the classification of the withheld information.

#### E7.4. PROTECTION OF PRIVACY

The Secretary concerned shall maintain case resolution files, and permit disclosure of or access to such files in accordance with the provisions of the Missing Persons Act (reference (b)), the Privacy Act (reference (f)), the McCain Bill (reference (g)), and other applicable laws and regulations pertaining to the privacy of the persons upon whom case resolution files exist.

#### E7.5. PRIVILEGED INFORMATION

E7.5.1. Debriefing reports provided by missing persons who were returned to United States control from July 8, 1959 to February 10, 1996, whether or not obtained

under a promise of confidentiality, shall be withheld by the Secretary concerned from case resolution files as privileged information.

E7.5.2. The Secretary concerned shall withhold from case resolution files, as privileged information, debriefing reports provided by missing persons returned to United States control on or after February 10, 1996 if they are obtained under a promise of confidentiality that was given in order to ensure the returnee's fullest possible disclosure of information. DD Form 2810, Promise of Confidentiality, is found at attachment E7.A2. of this enclosure and shall be used when debriefing returnees.

E7.5.3. The Secretary concerned shall prepare an extract of non-derogatory information if a debriefing report contains non-derogatory information about:

E7.5.3.1. The status and whereabouts of a missing person other than the debriefee; or

E7.5.3.2. Other missing persons who are not named in the report (but the identity of whom the Secretary can deduce from a totality of the evidence). That extract, following a review by the debriefee, shall be placed in the case resolution file of each missing person named in the debriefing report in such a manner as to protect the identity of the debriefee.

E7.5.3.3. Derogatory information is, for example, any information that may tend to incriminate, or is not material to the issue and may degrade, the debriefee or other persons mentioned in the debriefing.

E7.5.3.4. If the extract contains any information pertaining to other unnamed missing persons (the identity of whom the Secretary can deduce from a totality of the evidence), the information shall:

E7.5.3.4.1. Be made reasonably accessible to the primary next of kin, members of the immediate family; and

E7.5.3.4.2. The previously designated person of the unnamed missing persons. At a minimum, the extract of information shall be placed in the case resolution file of the other unnamed missing person(s).

E7.5.3.4.3. The Secretary concerned, or his or her designee, shall ensure a copy of the extract is sent to the primary next of kin (and, in appropriate cases, any previously designated person and other adult members of the immediate family) of:

E7.5.3.4.3.1. A named missing person; or

E7.5.3.4.3.2. One or more unnamed missing persons.

E7.5.4. Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a case resolution file, the Secretary shall ensure that the file contains a notice that the withheld information exists. Attachment E7.A3. of this enclosure is entitled "Notice of Privileged Information." This notice shall be posted in or on the file so as to be readily visible to persons reviewing the file.

#### E7.6. AVAILABILITY OF INFORMATION

E7.6.1. The Secretary concerned shall, upon request, make available the contents of a missing person's case resolution file to the primary next of kin, the other members of the immediate family, or any other previously designated person. Classified information, debriefing reports or portions thereof, or information protected by the Privacy Act or by other applicable laws and regulations may be made available, for official use only, to personnel within the Department of Defense possessing the appropriate security clearance and having a valid need to know.

E7.6.2. The primary next of kin, other members of the immediate family, and any other previously designated person (hereinafter "family member") may visit the governmental office maintaining their respective missing person's case resolution file in order to:

E7.6.2.1. Review and meet with governmental officials to resolve uncertainties and illuminate facts in an open and personal manner. Family members assume all costs incurred in their review of case resolution files. The primary next of kin cannot deny an adult member of the family (age eighteen or over) of the missing person the right to learn of information concerning the location, treatment, or condition of the missing person.

E7.6.3. To obtain access to case resolution files the family member and the governmental officer must coordinate as appropriate.

E7.6.3.1. The family member will initiate the case resolution file review process by sending a written request for the file review to the governmental office maintaining the case resolution file. The request shall establish the family member's entitlement to the file review and include both a primary and an alternate date for review of the file. These dates shall be no less than 45 calendar days in the future.

E7.6.3.2. The governmental office shall verify the requester's entitlement to review the case resolution file and provide the requester with the approved review date, a general description of the amount of information available in the respective missing person's file, and the location for the file review. A member of the governmental office shall accompany the family member during the file review.

E7.6.3.3. Upon request, the governmental office shall mail a copy of the declassified case resolution file to any person entitled thereto.

Attachments - 3

- E7.A1. Notice of Withholding of Classified Information from a Case Resolution File
- E7.A2. DD Form 2810, Promise of Confidentiality--SAMPLE
- E7.A3. Notice of Withholding of Privileged Information from a Case Resolution File



E7.A1. ATTACHMENT 1 TO ENCLOSURE 7

NOTICE OF WITHHOLDING OF CLASSIFIED INFORMATION FROM A CASE  
RESOLUTION FILE

**NOTICE**  
**OF**  
**CLASSIFIED INFORMATION**

THIS NOTICE IS POSTED TO THIS FILE PURSUANT TO THE  
REQUIREMENTS IMPOSED BY TITLE 10 UNITED STATES CODE,  
SECTION 1506(b)

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TO ANYONE REVIEWING THE CONTENT OF THIS FILE, PLEASE NOTE:

1. THE SECRETARY OF ONE OF THE ARMED SERVICES,  
OR HIS OR HER DELEGATEE, HAS DECIDED TO WITHHOLD  
FROM THIS FILE ONE (OR MORE) ITEM OF CLASSIFIED  
INFORMATION (PURSUANT TO 10 USC 1506[b]).
2. YOU ARE NOTIFIED THAT THE WITHHELD INFORMATION  
EXISTS.
3. THE DATE OF THE MOST RECENT REVIEW OF THE  
CLASSIFICATION OF THE WITHHELD INFORMATION  
WAS:

\_\_\_\_\_  
(Date)

E7.A2. ATTACHMENT 2 TO ENCLOSURE 7PROMISE OF CONFIDENTIALITY--SAMPLE

<b>PROMISE OF CONFIDENTIALITY</b>		
<i>(10 United States Code Section 1506(d))</i>		
<p>It is in the interest of the United States that missing persons who are returned to the control of the United States provide the fullest possible disclosure of information during their absence.</p> <p>To ensure this fullest possible disclosure, the Secretary of the armed service to which you belong or for whom you are employed promises to withhold from disclosure your debriefing report or any part thereof as privileged information.</p> <p>If your debriefing report contains non-derogatory information about the status and whereabouts of someone else who remains a missing person (either named or unnamed), then you should know that the Secretary of your armed force will prepare an extract of that non-derogatory information. You will have an opportunity to review the extract. Thereafter, the extract will be placed in the file of each missing person whom you name in your debriefing report. However, the extract will protect your identity. The information in the extract will be made reasonably accessible to the missing person's primary next of kin, members of the immediate family, and any person previously designated by the missing person to receive information about his or her whereabouts and status. The reason we do this is to provide as much information as possible to those who are trying to locate and recover missing persons and to let the missing persons' loved ones know as much as we can lawfully tell them.</p>		
<b>PRIVACY ACT STATEMENT</b>		
<p><b>AUTHORITY:</b> Chapter 76, Title 10 U.S.C., and E.O. 9397.</p> <p><b>PRINCIPAL PURPOSE(S):</b> To aid in personnel recovery, SERE (survival, evasion, resistance, and escape) training, operational planning, verification of Geneva Conventions by captors, and re-integration of returning personnel.</p> <p><b>ROUTINE USE(S):</b> Information may be provided to the Central Intelligence Agency, the State Department, and the National Security Council to facilitate interagency cooperation on personnel recovery issues.</p> <p><b>DISCLOSURE:</b> Voluntary; however, failure to furnish requested information may impede DoD efforts to assist you in the re-integration process.</p>		
<b>RETURNEE</b>		
<p><b>1. SIGNATURE</b></p> <p>/SIGNED/</p>		
<p><b>2. NAME</b> <i>(Last, First, Middle Initial)</i></p> <p>DOE, JOHN E.</p>		
<p><b>3. SOCIAL SECURITY NUMBER</b></p> <p>123-45-6789</p>	<p><b>4. RANK/GRADE</b></p> <p>1LT/O-2</p>	<p><b>5. SERVICE</b></p> <p>U.S. ARMY</p>
<p><b>6. ORGANIZATION OR UNIT</b></p> <p>Operational Detachment A-21, 15<sup>th</sup> Special Forces Group (Airborne)</p>		
<p><b>7. LOCATION OF DEBRIEFING</b></p> <p>Fort Hooah, Texas</p>		

DD FORM 2810, NOV 1999

E7.A3. ATTACHMENT 3 TO ENCLOSURE 7

NOTICE OF WITHHOLDING OF PRIVILEGED INFORMATION FROM A CASE  
RESOLUTION FILE

**NOTICE**  
**OF**  
**PRIVILEGED INFORMATION**

THIS NOTICE IS POSTED TO THIS FILE PURSUANT TO THE  
REQUIREMENTS IMPOSED BY TITLE 10 UNITED STATES CODE,  
SECTION 1506(d)(3)

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TO ANYONE REVIEWING THE CONTENT OF THIS FILE, PLEASE NOTE:

1. THE SECRETARY OF ONE OF THE ARMED SERVICES,  
OR HIS OR HER DELEGATEE, HAS DECIDED TO WITHHOLD  
FROM THIS FILE A DEBRIEFING REPORT OR PART OF A  
DEBRIEFING REPORT (PURSUANT TO 10 USC 1506[d]).
2. YOU ARE NOTIFIED THAT THE WITHHELD INFORMATION  
EXISTS.

E8. ENCLOSURE 8  
PREENACTMENT CASES

E8.1. PREENACTMENT CASE REVIEW

E8.1.1. Attachment E8.A1. of this enclosure is a flow chart setting forth the elements of preenactment cases.

E8.1.2. The Secretary concerned shall appoint a preenactment case board to inquire into the whereabouts and status of covered persons if:

E8.1.2.1. New information is found or received that may relate to one or more unaccounted for persons (whether or not it may specifically relate to any particular unaccounted for person); and

E8.1.2.2. May result in a change in the status of, or significantly contribute to resolving the fate of, an unaccounted for person as determined by the Director, DPMO.

E8.2. CASES ELIGIBLE FOR REVIEW

E8.2.1. The cases eligible for review as preenactment cases are the following:

E8.2.1.1. With respect to the Korean conflict, any unaccounted for person who was classified as a prisoner of war or as missing in action during that conflict and who:

E8.2.1.1.1. Was known to be or suspected to be alive at the end of that conflict; or

E8.2.1.1.2. Was classified as missing in action and whose capture was possible.

E8.2.1.2. With respect to the Cold War, any unaccounted for person who was engaged in intelligence operations (such as aerial "ferret" reconnaissance missions over and around the Soviet Union and China) during the Cold War.

E8.2.1.3. With respect to the Indochina War era, any unaccounted for person who was classified as a prisoner of war or as missing in action during the Indochina conflict.

E8.2.2. For the purpose of determining eligibility for review as a preenactment case, the following time periods apply:

E8.2.2.1. "Korean conflict." The period beginning on June 27, 1950 and ending on January 31, 1955.

E8.2.2.2. "Cold War." The period beginning on September 2, 1945 and ending on August 21, 1991.

E8.2.2.3. "Indochina War era." The period beginning on July 8, 1959 and ending on May 15, 1975.

E8.2.3. "New information" is information that is credible and that:

E8.2.3.1. Is found or received after November 18, 1997 by a United States intelligence agency, by a DoD Agency, or by the primary next of kin, other members of the immediate family, and any other previously designated person of the missing person; or

E8.2.3.2. Is identified after November 18, 1997 in records of the United States as information that could be relevant to the case of one or more unaccounted for persons from the Korean conflict, the Cold War, or the Indochina War era.

### E8.3. ACTION UPON DISCOVERY, RECEIPT, OR IDENTIFICATION OF NEW INFORMATION

E8.3.1. If new information is found or received that may relate to one or more unaccounted for persons (whether or not it may specifically relate to any particular unaccounted for person), it shall be provided to the Defense Prisoner of War/Missing Personnel Office, 2400 Defense Pentagon, Washington, DC 20301-2400.

E8.3.2. The Director, DPMO shall consider whether the new information may result in a change in status of, or significantly contribute to resolving the fate of, an unaccounted for person.

E8.3.3. Upon discovery, receipt, or identification of information relating to a missing person, the Director, DPMO shall as expeditiously as possible ensure that the information is added to the missing person's case resolution file and notify the following of the existence of the information:

E8.3.3.1. The designated missing person's counsel for that person;

E8.3.3.2. The primary next of kin and any previously designated person;

E8.3.3.3. The appropriate Service Casualty/Mortuary Affairs Office; and

E8.3.3.4. The Secretary concerned or his or her designee.

E8.3.3.5. Attachment E6.A2. to enclosure 6 is a sample letter that may be used to notify persons or offices of the receipt of this information.

E8.3.4. In regard to appointing a preenactment case board upon receipt of new information, the duties of the Director, DPMO are the same as those described in paragraphs E6.2.3. and E6.2.4. for appointment of a further review board.

#### E8.4. COMPOSITION OF THE BOARD

E8.4.1. The composition of a preenactment case board is the same as that described in paragraph E5.2.1. Duties of the legal advisor are described at paragraph E4.2.3.

E8.4.2. The Secretary concerned shall designate one member of a preenactment case board as president of the Board. The president of the Board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the Board.

#### E8.5. DUTIES OF THE PREENACTMENT CASE BOARD

The preenactment case board shall:

E8.5.1. To the extent they exist, review the commander's initial report, the report of the initial board of inquiry, the report of the subsequent board of inquiry, and the report of any further review board(s).

E8.5.2. Collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person following the most recent board process.

E8.5.3. Draw conclusions as to the whereabouts and status of the person.

E8.5.4. Considering the evidence derived from paragraphs E8.5.1. and E8.5.2. determine whether, by a preponderance of the evidence, the status of the person should be continued or changed or, if appropriate, whether the person is accounted for.

E8.5.5. Submit to the Secretary concerned a report describing the findings and conclusions of the preenactment case board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

#### E8.6. COUNSEL FOR MISSING PERSONS

E8.6.1. The Secretary concerned shall appoint counsel to represent each person covered by the preenactment case board. If the absence or missing status of two or more persons may be factually related, the Secretary concerned shall appoint one counsel to represent all such persons. If a conflict of interest results, then the missing person's counsel shall report this to the Secretary concerned who shall then appoint such additional counsel as is necessary. The missing person's counsel represents the interests of the missing person and not those of any member of the person's family or other interested parties. The identity of the missing person's counsel shall be made known to the primary next of kin and to any previously designated person. Attachment E4.A2. to enclosure 4 is a sample letter that can be used to notify the primary next of kin or the previously designated person of the identity of the missing person's counsel.

E8.6.2. The qualifications, rights, and duties of the missing person's counsel are described at paragraphs E4.5.2. through E4.5.5.

E8.6.3. The missing person's primary next of kin and any other previously designated person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

E8.6.4. The missing person's counsel's review of the Board's report shall be made an official part of the Board's record.

#### E8.7. ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS

E8.7.1. The missing person's primary next of kin, other members of the immediate family, and any other previously designated person may attend the proceedings of the preenactment case board.

E8.7.2. The duties of the Secretary concerned regarding sending of notice to interested persons are the same as those described in paragraph E5.5.2. The requirements imposed upon those persons receiving notice and their rights and obligations in connection with their attendance are the same as those described in paragraphs E5.5.3. through E5.5.5.

#### E8.8. AVAILABILITY OF INFORMATION TO BOARDS

E8.8.1. A preenactment case board may request of any Department or Agency of the United States any information that the Board considers necessary in order to conduct the proceedings. Attachment E5.A3. to enclosure 5 is a sample letter that may be used in making a request.

E8.8.2. Actions in response to a written request from the president of a preenactment case board and actions to take in regard to security clearances are found at paragraphs E5.6.2. and E5.6.3.

#### E8.9. RECOMMENDATION ON STATUS

E8.9.1. Upon completion of a preenactment case board, the Board shall make a recommendation, based upon findings that are supported by a preponderance of the evidence, as to the current whereabouts and status of each missing person covered by the Board. A majority vote shall determine the Board's findings and recommendation.

E8.9.2. The prerequisites for a preenactment case board recommending that a person be declared dead are the same as those located at paragraph E4.7.3.

E8.9.3. A flow chart setting forth the elements required for recommending a status of death is found at attachment E4.A4. to enclosure 4.

E8.9.4. If the preenactment case board makes a recommendation that a missing



person be declared dead, the Board shall include in the report of the Board the information found in paragraph E4.7.4.

#### E8.10. REPORT OF THE BOARD

A preenactment case board shall submit to the Secretary concerned a report on the review carried out by the Board. Evidence that is considered by the Board in forming its recommendation shall be made a part of the official record of the Board. The evidence shall be submitted to the Secretary concerned at the time that the Board submits its report. Topics required to be included in the Board's report are contained in paragraph E4.7.2. The report may include a classified annex. DD Form 2811 is found at attachment E4.A3. to enclosure 4 and shall be used in preparation of the Board's report.

#### E8.11. ACTIONS BY SECRETARY CONCERNED

Actions to be taken by the Secretary concerned after the receipt of a report from a preenactment case board are the same as those located at paragraphs E5.9.1. through E5.9.3.

#### E8.12. REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS

Described in section E5.10. are the actions the Secretary concerned must take to provide the Board report to certain persons and the time by which those actions must be accomplished.

#### E8.13. TREATMENT OF DETERMINATION

The determination of a missing person's status by the Secretary concerned, upon the recommendation by a preenactment case board, shall:

E8.13.1. Supersede the determination entered upon the recommendation by any previous subsequent board of inquiry or further review board; and

E8.13.2. Be treated as the determination of the status of the missing person by all Agencies and Activities of the United States.

**E8.14. EXTENSION OF TIME LIMIT**

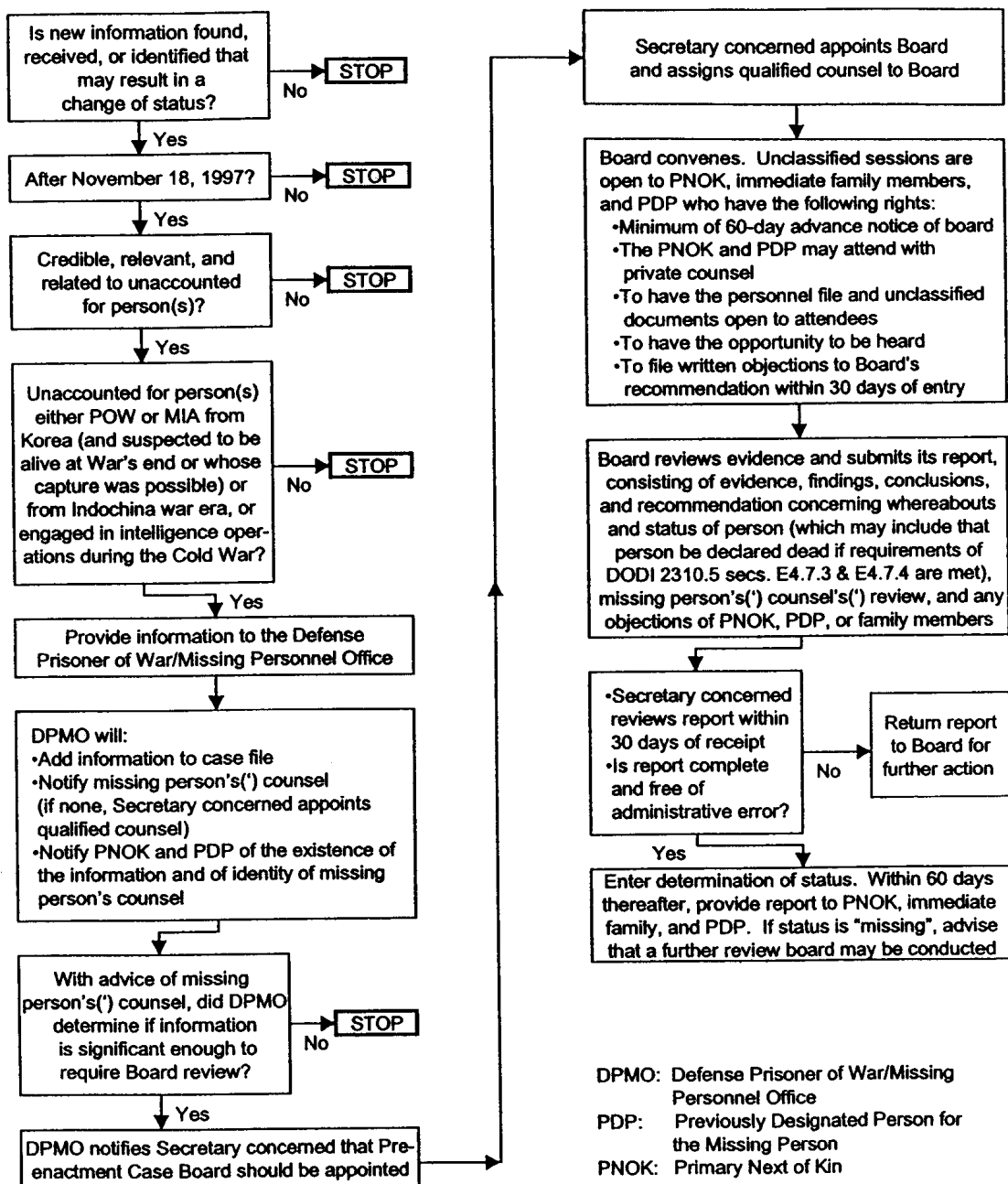
Extensions of time may be requested, and extensions granted, on the same basis as described in section E3.4.

Attachments - 1

E8.A1. Flow Chart: Preenactment Cases

## E8.A1. ATTACHMENT 1 TO ENCLOSURE 8

## PREENACTMENT CASES



## E9. ENCLOSURE 9

### ARMED FORCES IDENTIFICATION REVIEW BOARD

#### E9.1. PURPOSE

E9.1.1. The purpose of the Armed Forces Identification Review Board (AFIRB) is to review, in appropriate cases, forensic evidence identification of military or civilian personnel whose remains have been recovered and for whom a:

E9.1.1.1. DD Form 1300 has been issued;

E9.1.1.2. Presumptive finding of death has been made; or

E9.1.1.3. Secretary concerned has entered a determination under the provisions of the Missing Persons Act (reference(b)).

E9.1.2. The responsibilities of the AFIRB in this Instruction do not supersede the jurisdiction or authority of the Armed Forces Medical Examiner in medico-legal death investigations under DoD Directive 5154.24 (reference h), Sections 4711 and 9711 of title 10, United States Code (reference (i)), or CJCS Memorandum of Policy #16 (reference (j)).

#### E9.2. SCOPE

E9.2.1. The AFIRB shall, as appropriate, review the forensic evidence regarding the identification of any person (hereinafter "covered person") who was, at the time of loss:

E9.2.1.1. A member of the Armed Forces on active duty or Reserve component performing official duties; or

E9.2.1.2. A citizen of the United States who is:

E9.2.1.2.1. A civilian officer or employee of the Department of Defense;

or

E9.2.1.2.2. An employee of a contractor of the Department of Defense.

E9.2.2. The Under Secretary of Defense for Policy may expand the scope of covered persons whose identification is considered for review by the AFIRB.

### E9.3. DECONFLICT WITH THE MISSING PERSONS ACT

The Secretary of the Army, as Executive Agent for mortuary affairs, may convene the AFIRB after a request of the person authorized to direct disposition of the remains (PADD) for the identified individual when:

E9.3.1. The Department of Defense establishes the identification of the remains of a covered person; and

E9.3.2. The convening of a board pursuant to the provisions of the Missing Persons Act (reference (b)) is not otherwise required.

### E9.4. COMPOSITION OF THE AFIRB

E9.4.1. The AFIRB shall consist of one primary voting member each from the Departments of the Army, Navy and Air Force as designated by their respective Departments. Each Secretary concerned, or designated representative thereof, may designate alternate voting members in the event that a primary member cannot serve. Department of the Navy may designate a Marine Corps representative as its voting member; however, Department of the Navy shall be limited to one vote for each case resolution file considered by the AFIRB. The voting members shall be in the grade of Colonel, Navy Captain, GM-15 or higher. The Army voting member is designated as the president. Members of the Board shall have a security clearance that affords them access to all information relating to the identification. Nonvoting members include a representative of the Defense Prisoner of War/Missing Personnel Office and the legal counsel to the Board.

E9.4.2. For purposes of providing legal counsel to the Board, the Secretary of the Army, or his designated representative, shall assign to the Board a judge advocate, or appoint to the Board an attorney, who has expertise in the law relating to missing persons. Counsel so assigned or appointed may be referred to as the "legal advisor" and shall represent the interests of the United States. Duties of the legal advisor shall include advising the Board on questions of law or procedure pertaining to the Board

and instructing the Board on governing statutes and directives. The legal advisor shall not participate in the Board's deliberations in closed session but shall monitor (i.e., observe) the Board's deliberations.

E9.4.3. To be appointed as legal counsel to the Board, a person must:

E9.4.3.1. Be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State;

E9.4.3.2. If other than a judge advocate, be a member of the bar of a Federal court or of the highest court of a State;

E9.4.3.3. Be certified as competent to perform his or her duties by the Judge Advocate General of the Armed Force of which he or she is a member or, if a civilian, the appointing authority; and

E9.4.3.4. Have a security clearance that affords the legal advisor access to all information relating to the cases considered by the AFIRB.

#### **E9.5. DUTIES OF THE AFIRB**

The AFIRB shall:

E9.5.1. Review the identification reports of the U.S. Army Central Identification Laboratory, Hawaii (CILHI).

E9.5.2. Collect and evaluate any document, fact, or other evidence with respect to the identification under review by the Board.

E9.5.3. Analyze the facts and evidence, make findings which must be supported by a preponderance of the evidence based on that analysis, and draw conclusions as to the identity of the remains.

E9.5.4. Considering the evidence in paragraphs E9.5.1. and E9.5.2., determine by a majority vote whether the identification is sustained.

E9.5.5. The AFIRB may consider the reports and findings of other U.S. Government scientists or Government-contracted civilian consultants, who, if possible, are board certified in their forensic specialty, e.g., anthropology, pathology, odontology, or molecular biology (DNA). Scientists and consultants shall review and evaluate identifications and accompanying case resolution files and provide individual

written evaluations of their findings. Any evaluations shall be provided to the AFIRB and made a part of the case resolution file.

#### E9.6. IDENTIFICATION OF REMAINS

E9.6.1. The CILHI shall establish the identity of the remains in a manner analogous to that in which civilian cases are approved by a medical examiner. Identifications by CILHI may, at the discretion of the CILHI Scientific Director, be submitted to consultants for review. The laboratory findings and techniques used by CILHI shall be included in the file to be presented to the AFIRB. This file will also include recovery documentation, postmortem processing documents, photographs, antemortem medical and dental records (including photographs and radiographs), and any other relevant documentation and information from governmental agencies. In all instances, CILHI shall record in the case files any information that suggests that characteristics of the remains or other information may correlate to a specific individual(s).

E9.6.2. When identification and accompanying case file have been completed by CILHI, the Commander, CILHI will notify the Director, U.S. Army Casualty and Memorial Affairs Operations Center (CMAOC). CMAOC will notify the appropriate Service mortuary/casualty office of the identification. The appropriate Service representative will present the identification of the remains to the PADD, as determined by DoD Instruction 1300.18 (reference (k)), for his or her acceptance and final disposition. Located at attachment E9.A1. of this enclosure is a sample letter that may be used in conjunction with notifying the PADD. Acceptance of the remains by the PADD terminates the matter for the Government.

E9.6.3. Where the identification of the remains of a single individual is impossible and the evidence sufficiently identifies the remains as those belonging to a specific group, CILHI may identify the remains as those belonging to members of the group.

E9.6.4. If any PADD accepts the identification as described in E9.6.3., the identification of those remains will not be submitted to the AFIRB should an appeal of the identification be filed by another PADD. The fact that any PADD has accepted the identification as described in E9.6.3. may be made known to the AFIRB.

## E9.7. NOTIFICATION OF RIGHT TO HEARING BEFORE AFIRB

E9.7.1. The Service mortuary/casualty office representative shall advise the PADD of the opportunity to have the AFIRB evaluate and review the identification of the remains and of the PADD's rights and obligations before the AFIRB. The sample letter located at attachment E9.A1. of this enclosure may be used to furnish this advice to the PADD. The letter includes a sample "Notice of Intent," for use by the PADD, that the Service mortuary/casualty officer may deliver at the time the PADD is informed of the opportunity to request a hearing before the AFIRB.

E9.7.2. If the PADD desires a hearing before the AFIRB, the PADD shall notify CMAOC of that intent not later than 21 calendar days after the date the PADD was advised of the opportunity for a hearing before the AFIRB. The 21 calendar days shall commence upon the later of the date of the letter advising the PADD of the opportunity to request a hearing before the AFIRB or the PADD's meeting with a representative from a Military Department or governmental agency. If the PADD elects a hearing before the AFIRB, the PADD:

E9.7.2.1. May attend the proceedings with private counsel;

E9.7.2.2. Shall have access to any unclassified information or documents in the case file, not otherwise privileged, to be considered by the AFIRB. The PADD shall be provided an unclassified summary or extract of any classified or privileged information in the case file;

E9.7.2.3. Shall be afforded the opportunity to present information at the proceedings of the Board that such individual considers to be relevant thereto; and

E9.7.2.4. Shall be given the opportunity to submit in writing an objection to any final determination of the Board regarding the identity of the remains provided:

E9.7.2.4.1. A letter of intent is submitted to the president of the Board not later than 15 calendar days after the date on which the identification was presented to the PADD; and

E9.7.2.4.2. The written objection is submitted to the president of the Board not later than 15 calendar days after the date on the letter of intent. The president of a Board shall include any timely objection to a recommendation of the Board in the report of the Board containing the recommendation.



E9.7.2.4.3. Notice of the hearing date shall be provided to the PADD not less than 30 calendar days before the first meeting of the Board. Attachment E9.A2. of this enclosure is a sample letter that may be used to notify the PADD of the hearing date.

E9.7.3. In exceptional circumstances, as determined by the Director, DPMO, the PADD shall be afforded the opportunity to submit the remains for private mitochondrial DNA (mtDNA) testing only when the Government has used mtDNA testing as part of its identification and the additional testing will not wholly consume the remains. Such testing shall be performed subsequent to appointment but prior to convening the AFIRB. To ensure the accountability and integrity of the remains, due to the destructive testing involved, the following conditions will apply:

E9.7.3.1. DD Form 2809, Agreement to be Signed by Person Authorized to Direct Disposition (PADD) Prior to Private mtDNA Testing, is found at attachment E9.A3. of this enclosure. This agreement specifies the legal responsibilities of the parties and must be signed by the PADD prior to release of the remains for testing.

E9.7.3.2. The PADD is responsible for any costs associated with the additional mtDNA testing of the remains and associated interpretation of the results. The Government will fund any costs associated with the transport of the remains to and/or from the private laboratory selected by the PADD.

E9.7.3.3. The Government will retain chain of custody control over remains during the testing process. CILHI will cut the samples, identified suitable for testing, and send them to the laboratory selected by the PADD.

E9.7.3.4. Upon direction of the Executive Agent, the Armed Forces DNA Identification Laboratory (AFDIL), Armed Forces Institute of Pathology, will perform a site visit of the proposed laboratory selected by the PADD to inspect facilities, review work procedures, and evaluate quality control processes. AFDIL personnel will be allowed, if requested by the Government, to observe the testing process, as necessary, or review data at critical testing checkpoints.

E9.7.3.5. The laboratory selected by the PADD must complete its testing within six months of its receipt of the samples of the remains. At the conclusion of the testing, the laboratory will provide to the Director, CMAOC a synopsis of its report together with a copy of the report and any enclosures. If the laboratory exceeds the six-month time limit, the U.S. Government results will be deemed to be the accepted results of the mtDNA testing.

E9.7.3.6. Conduct of the testing by the laboratory selected by the PADD gives it no special acknowledgment, certification, or recognition by the Government.

E9.7.3.7. Prior to convening the AFIRB, the Government and the PADD shall exchange all information each intends to introduce during the AFIRB proceedings. Any discrepancies in mtDNA testing results shall be noted and presented to the AFIRB.

E9.7.3.8. The PADD, on attending the proceedings of AFIRB, shall not be entitled to reimbursement by the United States for any costs. This would include travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses that the PADD incurred attending such proceedings.

E9.7.4. If the PADD declines to accept the remains and fails to request a hearing before the AFIRB within 21 calendar days after being advised of the opportunity to request a hearing, the Service casualty officer shall again offer the PADD the opportunity to accept the remains for final disposition. If the PADD continues to decline acceptance of the remains, the PADD shall be informed that the appropriate Secretary concerned will be contacted for directions concerning final disposition of the remains. Disposition of the remains in accordance with directions from the Secretary concerned terminates the matter for the Government.

#### E9.8. AFIRB PROCEDURES

E9.8.1. Upon receipt by CMAOC of timely notice from the PADD, the AFIRB shall be convened. CMAOC shall notify the Defense Intelligence Agency in order that it may furnish relevant intelligence or incident data in connection with the identification. A legal advisor shall be appointed.

E9.8.2. The AFIRB may review two or more identifications during a session if so doing will not unduly delay the proceedings.

E9.8.3. The AFIRB will review the identification and accompanying case file. During its review, it may request of any Department or Agency of the United States any information that the board considers necessary in order to conduct the proceedings. In addition, it may contact the consultants or other advisors as it deems appropriate.

E9.8.4. The president of the AFIRB shall close to persons who do not have

appropriate security clearances the proceeding of the Board at which classified information is discussed. Participants at a proceeding of a Board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. Upon request by the Board president, the Director, CMAOC shall assist the president in ensuring that classified information is not compromised through Board proceedings.

#### E9.9. IDENTIFICATION REVIEW

Upon completion of the review, the AFIRB shall enter its findings as to the identification of the remains. The findings must be supported by a preponderance of the evidence. A majority vote shall determine the Board's findings.

#### E9.10. REPORT OF THE BOARD

E9.10.1. The AFIRB shall submit to the Director, CMAOC its report on the proceedings carried out by the Board. Evidence that is considered by the Board in formulating its findings shall be made a part of the official record of the Board. The evidence shall be submitted to the Director, CMAOC at the time the Board submits its report. The report shall include:

E9.10.1.1. A discussion of the facts and evidence the Board considered;

E9.10.1.2. The Board's findings with respect to each identification the report covers; and

E9.10.1.3. Disclosure of whether the Board reviewed classified documents and information or used them otherwise in reaching its conclusions.

E9.10.2. The report may include a classified annex.

#### E9.11. ACTIONS BY THE DIRECTOR, CMAOC

E9.11.1. Not later than 30 calendar days after the receipt of a report from the AFIRB, the Director, CMAOC shall review the report and any timely objections to the report submitted by the PADD.

E9.11.2. In reviewing the Board's report (including any written objections thereto), the Director, CMAOC shall determine whether or not the report is complete

and free of administrative error. If the Director, CMAOC determines that the report is incomplete, or that the report is not free of administrative error, the Director, CMAOC may return the report to the Board for further action on the report by the Board.

E9.11.3. Upon a determination by the Director, CMAOC that the report is complete and free of administrative error, the Director, CMAOC shall approve the findings of the Board. Identifications that are disapproved will be remanded to the CILHI.

#### E9.12. REPORT TO THE PADD

Not later than 60 calendar days after the date on which the Director, CMAOC approves the identification by the AFIRB, the report of the AFIRB will be forwarded through the appropriate Service mortuary/casualty affairs office to the PADD. If the report is classified or the report contains a classified annex, no classified material therein may be made available to the PADD. The PADD will be given 60 calendar days after receipt of the report to accept or reject the remains.

#### E9.13. TREATMENT OF DETERMINATION

The approval of the identification by the Director, CMAOC, after the receipt of the findings in the report submitted by the AFIRB, shall be treated as the determination of the identity by all Agencies and Activities of the Department of Defense.

#### E9.14. EXTENSION OF TIME LIMIT

The Director, CMAOC can extend any time limit specified herein on a case-by-case basis and only upon a showing of good cause. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. For example, if an action must be taken within 30 calendar days but circumstances prevent doing so an extension may be requested; however, the length of the extension may not exceed thirty days. The Director, CMAOC may provide subsequent extensions on the same basis.

#### E9.15. FINAL DISPOSITION OF REMAINS

E9.15.1. The appropriate Secretary concerned will be contacted for directions concerning final disposition of the remains if:

E9.15.1.1. The PADD rejects the remains; or

E9.15.1.2. No response is received from the PADD within 60 calendar days after the AFIRB report is presented to the PADD and the PADD has obtained no extension of the time limit for sending a response.

E9.15.2. Disposition of the remains in accordance with directions from the Secretary concerned terminates the matter for the Government.

Attachments - 3

E9.A1. Letter to Person Authorized to Direct Disposition of Remains of Right to Request Hearing Before the Armed Forces Identification Review Board

E9.A2. Letter to Person Authorized to Direct Disposition of Remains of Hearing Date Before the Armed Forces Identification Review Board

E9.A3. DD Form 2809: Agreement to be Signed by PADD Prior to Private mtDNA Testing--SAMPLE

E9.A1. ATTACHMENT 1 TO ENCLOSURE 9

LETTER TO PERSON AUTHORIZED TO DIRECT DISPOSITION OF REMAINS  
ADVISING OF RIGHT TO REQUEST HEARING BEFORE THE ARMED FORCES  
IDENTIFICATION REVIEW BOARD

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

**ADDRESSEE:**

*Name of person authorized to  
direct disposition of remains  
Street  
City, State Zip Code*

Dear *[Name of Addressee]*:

It is my understanding that you are the person authorized to direct the disposition of the remains of *[Rank, if any, and name of person]*. The U.S. Army Central Identification Laboratory, Hawaii, after a thorough forensic investigation, has identified the remains as being those of *[Rank, if any, and name of person]*. A representative of the *[Military Department or Government Agency]*, *[Rank, if any, and name of Government representative]*, will meet with you and explain the findings of the laboratory. I feel confident that the identification by the laboratory is accurate. If, after reviewing the laboratory's report and all of your questions are answered to your satisfaction, you agree that the remains are those of *[Rank, if any, and name of covered person]*, you may accept the remains for final disposition.

In the event that you still have questions or disagree with the identification, you have the right to request a hearing before the Armed Forces Identification Review Board. If you desire a hearing, you must sign and send the enclosed Notice of Intent to the following address: *[name and address of U.S. Army Casualty and Memorial Affairs Operations Center]*. The U.S. Army Casualty and Memorial Affairs Operations Center must receive your signed Notice of Intent not later than 21 calendar days after the later of:

- (1) The date of this letter advising you of the opportunity to request a hearing before the Armed Forces Identification Review Board, or
- (2) Your meeting with a representative of the *[Military Department or Government Agency]*.

If you elect a hearing before the Armed Forces Identification Review Board, you:

- (1) May attend the proceedings with private counsel;
- (2) Shall have access to any unclassified information or documents in the case file, not otherwise privileged, to be considered by the Armed Forces Identification Review Board. You shall be provided an unclassified summary or extract of any classified or privileged information in the case file;

- (3) Shall be afforded the opportunity to present information at the proceedings of the Board that you consider to be relevant thereto; and
- (4) Shall be given the opportunity to submit in writing an objection to any finding of the Board regarding the identity of the remains provided:
  - (A) A letter of intent is submitted to the Board president not later than 15 calendar days after the date on which the identification is presented to you; and
  - (A) The written objection is submitted to the Board president not later than 15 calendar days after the date of your letter of intent. The Board president shall include any timely objection to a recommendation of the Board in the Board's report containing the recommendation.

Unfortunately, you will not be reimbursed by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) you may incur in attending and participating in the proceedings. You will be notified of the hearing date not less than 30 calendar days in advance of the hearing.

If you fail to file a timely request for a hearing before the Armed Forces Identification Review Board and decline to accept the remains, the Secretary of the *[Military Department]* will be contacted for directions concerning final disposition of the remains.

Sincerely yours,

(SIGNATURE BLOCK)

Enclosure:  
Notice of Intent

## NOTICE OF INTENT

TO: *Preprinted name and address of  
U.S. Army Casualty and Memorial  
Affairs Operations Center where  
notice should be mailed*

I am the person authorized to direct disposition of the remains of *[Rank, if any, and name of covered person]*. My name, address, and telephone number are (please type or print):

(Name) \_\_\_\_\_

(Street address) \_\_\_\_\_

(City, State, Zip Code) \_\_\_\_\_

(Telephone) \_\_\_\_\_

I have been advised that the U.S. Army Central Identification Laboratory, Hawaii has identified the remains of *[Rank, if any, and name of covered person]*. I understand that if I disagree with the identification, I may request a hearing before the Armed Forces Identification Review Board. I further understand that in order to have a hearing I must return this Notice of Intent to you. The Notice of Intent must be returned within 21 calendar days after the later of the date of the letter advising me of my right to such a hearing or my meeting with a representative of the *[Military Department or Government Agency]*. I understand that I may attend the proceedings of the Armed Forces Identification Review Board with private counsel and that I am entitled to reasonable access to the information that will be reviewed by the Board. Further, I understand that I will have the opportunity to present information to the Board that I consider to be relevant to the proceedings. I also understand that I can file a written objection to the Board's findings so long as I notify the Board president in writing of this within 15 calendar days after the Board enters its recommendation. Additionally, I understand that I must submit my written objection within 15 calendar days after the date on my letter advising the Board president of my notice of intent. Finally, I understand that I will not be entitled to reimbursement by the United States for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by me in attending such proceedings.

Please check one of the following:

\_\_\_\_\_ I agree with the identification and accept the remains

\_\_\_\_\_ I request a hearing before the Armed Forces Identification Review Board

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_



E9.A2. ATTACHMENT 2 TO ENCLOSURE 9

LETTER TO PERSON AUTHORIZED TO DIRECT DISPOSITION OF REMAINS,  
OF HEARING DATE BEFORE THE ARMED FORCES IDENTIFICATION  
REVIEW BOARD

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

*ADDRESSEE:*

*Name of person authorized to  
direct disposition of remains  
Street  
City, State Zip Code*

Dear *[Name of Addressee]*:

Please be advised that the Armed Forces Identification Review Board will convene to review the identification of the remains believed to be those of *[Rank, if any, and name of person]*. The Board will convene on *[insert date and time of hearing that shall be not less than 30 calendar days after the mailing of this letter]* at *[insert location]*. Driving directions and a map are enclosed to assist you in finding the location.

If you have any questions, please feel free to contact *[rank, if any, and name and telephone number of point of contact]*.

Sincerely yours,

(SIGNATURE BLOCK)

Enclosures:  
Driving directions  
Map

E9.A3. ATTACHMENT 3 TO ENCLOSURE 9AGREEMENT TO BE SIGNED BY PADD PRIOR TO PRIVATE mtDNA TESTING--SAMPLE

<b>AGREEMENT TO BE SIGNED BY PERSON AUTHORIZED TO DIRECT DISPOSITION (PADD) PRIOR TO PRIVATE mtDNA TESTING</b>
<p>I, <u>JANE A. DOE</u> of <u>ANYTOWN</u>, <u>VERMONT</u>, state that I am the Person Authorized to Direct Disposition (PADD) of the remains of <u>SGT RICHARD R. ROE</u>, a covered person as defined in the Missing Persons Act. In an effort to confirm the identity of certain remains, which have been identified by the United States Government to be those of <u>SGT RICHARD R. ROE</u>, I hereby request, and consent to, the conduct of private mitochondrial DNA testing upon said remains.</p> <p>FURTHERMORE, I consent to said mitochondrial (mtDNA) testing being performed pursuant to the following terms and conditions:</p> <ol style="list-style-type: none"> <li>1) the private laboratory must complete its testing within six months of its receipt of the sample; if it fails to do so, the U.S. Government results will be deemed to be the accepted results for the mtDNA testing;</li> <li>2) the Armed Forces DNA Identification Laboratory must participate in an oversight role for the private laboratory selected by me to conduct the test;</li> <li>3) the government will retain custody and control over the remains during the testing;</li> <li>4) the conduct of the test by the private laboratory gives it no special acknowledgment, certification and/or recognition by the government;</li> <li>5) all costs associated with the private mtDNA testing will be borne by me except for the cost to transport the remains to the laboratory which cost shall be borne by the government, and</li> <li>6) upon completion of the test, the results thereof will be submitted to the Armed Forces Identification Review Board with a copy thereof being provided to the Director, Casualty and Memorial Affairs Operations Center, U.S. Army.</li> </ol> <p>I HEREBY FURTHER REQUEST THAT <u>ABC LABORATORY, INC.</u>, of <u>DOWNTOWN</u>, <u>CALIFORNIA</u>, conduct this private mtDNA test.</p> <p>[(If applicable) I make this request with full knowledge that <u>ABC LABORATORY, INC.</u> has been employed occasionally by the United States Government in the past and is currently so employed in the present. Nevertheless, I consent to this testing being performed by (it/him/her).]</p> <p>DATED THIS <u>1ST</u> DAY OF <u>NOVEMBER</u>, 20<u>01</u>.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <u>/SIGNED/</u>  WITNESS </div> <div style="text-align: center;"> <u>/SIGNED/</u>  PADD </div> </div>

DD FORM 2809, NOV 1999